Supreme Court, U.S.
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(9) (9)

Nos. 01-705 and 01-715

In the Supreme Court of the United States

JO ANNE B. BARNHART, COMMISSIONER OF SOCIAL SECURITY, PETITIONER

v.

PEABODY COAL COMPANY, ET AL.

MICHAEL H. HOLLAND, ET AL., PETITIONERS

v.

BELLAIRE CORPORATION, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT APPENDIX

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PETITIONS FOR A WRIT OF CERTIORARI FILED: NOVEMBER 19, 2001
CERTIORARI GRANTED: JANUARY 22, 2002

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TABLE OF CONTENTS

Page

Peabody Coal Co., et al. v. *Barnhart*:

District court docket entries 1
Court of appeals docket entires 7
Complaint (Sept. 30, 1999) 10
Affidavit of Danny R. Moriarty, with attachments (Feb. 10, 2000) 25
Answer (Feb. 29, 2000) 48

Bellaire Corp., et al. v. *Barnhart, et al.*:

District court docket entries 56
Court of appeals docket entries 61
Complaint (June 4, 1999) 65
Declaration of Carl F. Tennille (Nov. 18, 1999) 92
Affidavit of Daniel J. Rolling, with attachments (Mar. 14, 2000) 95
Answer by Commissioner of Social Security (Nov. 3, 1999) 123
Affidavit of Michael D. Glass, with Exhibit 2-B (Mar. 29, 2000) 142
Answer by Trustees of UMWA Combined Fund (Apr. 7, 2000) 153
Attachment A to Commissioner's Memorandum in Opposition to Bellaire's Motion for Preliminary Injunction (May 1, 2000):
Correspondence from Social Security Administration 170
Declaraton of Richard Harron 179

NOTICE

The following items have been omitted in printing this appendix because they appear on the following pages in the printed appendix to the petition for a writ of certiorari in No. 01-705:

Peabody Coal Co., et al. v. *Barnhart*:

District Court Stipulation of Dismissal of Counts I-III Without Prejudice (Feb. 8, 2000) 9a
District Court Order Granting Summary Judgment to Peabody Respondents (Mar. 14, 2000) 7a
District Court Order dismissing count VI of Complaint with Prejudice (Apr. 13, 2000) 6a
Final Judgment of the District Court (July 11, 2000) 5a
Court of Appeals Order denying initial hearing en banc (Dec. 6, 2000) 26a
Decision of the Court of Appeals (June 21, 2001) 1a

Bellaire Corp., et al. v. *Barnhart, et al.*:

District Court Opinion Granting Summary Judgment to Bellaire respondents (June 30, 2000) 14a
Final Judgment of the District Court (June 30, 2000) .....
Court of Appeals Order denying initial hearing en banc (Dec. 6, 2000) 26a
Decision of the Court of Appeals (June 22, 2001) 3a

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY (OWENSBORO)

CIVIL DOCKET FOR CASE #: 99-CV-201

PEABODY COAL COMPANY; EASTERN ASSOCIATED COAL CORPORATION, PLAINTIFFS

v.

COMMISSIONER OF SOCIAL SECURITY, KENNETH S. APFEL, DEFENDANT

RELEVANT DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
9/30/99	1	COMPLAINT filed and (Summons(es)) issued) filing fee pd - receipt # 6619 (pmay) [Entry date 10/01/99]
9/30/99	2	ORDER eboc - case referred to Mag Judge E. R. Goebel for submission of findings of fact and conclusions of law and recommendations to the Court; answer and transcript due within 60 days after service of complaint; plaintiff granted 30 days thereafter to file statement of errors with fact and law summary; defendant

DATE	DOCKET NUMBER	PROCEEDINGS
		has 45 days thereafter to respond and file counter statement of fact and law; any request for oral argument should be incorporated in statement of specific errors; parties to comply as otherwise set forth; Case ready for submission 2/12/00 Ccs: counsel and Magistrate Judge. [Entry Date: 10/1/99] (pmay) [Entry date 10/01/99]
12/30/99	3	ORDER by Judge Joseph H. McKinley Jr. vacating [2-1] social security order (cc: all counsel) [Entry Date: 12/30/99] (phay)
2/8/00	8	STIPULATION of dismissal with respect to Counts I, II, and III of plas' complaint as settled (phay)
2/8/00	8	ORDER by Judge Joseph H. McKinley Jr. granting stipuation of dismissal with respect to Counts I, II, and III of plas' complaint [8-1] (cc: all counsel) [Entry Date: 2/8/00] (phay) [Edit date 02/08/00]

DATE	DOCKET NUMBER	PROCEEDINGS
2/11/00	10	MOTION by plaintiff Eastern Associated, plaintiff Peabody Coal Company for partial summary judgment; Memorandum in Support; order tendered (phay) [Entry date 02/14/00]
2/29/00	12	RESPONSE (OBJECTION) by Defendant to motion for partial summary judgment (10-1); order tendered (phay) [Entry date 03/02/00] [Edit date 03/14/00]
3/1/00	13	ANSWER by defendant CSS to Counts IV-VI of plas' complaint [1-1] (phay) [Entry date 03/02/00]
3/14/00	15	ORDER by Judge Joseph H. McKinley Jr. granting motion for partial summary judgment [10-1] and declared that all initial assignments the Commissioner made to Peabody Coal and Eastern Associated after 9/30/93 are null and void; Commissioner is enjoined from making any initial assignments to Peabody Coal and Eastern Associated in the

DATE	DOCKET NUMBER	PROCEEDINGS
		future; and ordered that Commissioner shall notify UMWA Combined Benefit Fund within 45 days of entry of this order of the identity of each beneficiary assignment to Peabody Coal and Eastern Associated from the Social Security Administration subject to this order, and inform the Combined Fund that said assignments are void and have been withdrawn terminating case (cc: all counsel) [Entry Date: 3/14/00] (eski)
3/21/00	16	MOTION by plaintiff Eastern Associated, plaintiff Peabody Coal Company to voluntarily dismiss Count VI of their Complaint; Memorandum in Support; order tendered (phay)
4/10/00	17	RESPONSE (OBJECTION) by defendant CSS to motion to voluntarily dismiss Count VI of their Complaint [16-1]; order tendered (phay) [Entry date 04/13/00]

DATE	DOCKET NUMBER	PROCEEDINGS
4/13/00	18	ORDER by Judge Joseph H. McKinley Jr. granting motion to voluntarily dismiss Count VI of their Complaint WITH PREJUDICE [16-1] (cc: all counsel) [Entry Date: 4/13/00] (seal)
5/31/00	19	MOTION by defendant CSS for entry of judgment; Memorandum in Support; order tendered (phay)
6/19/00	20	RESPONSE (OBJECTION) by plaintiff Eastern Associated, plaintiff Peabody Coal Company to motion for entry of judgment [19-1]; order tendered (phay)
6/30/00	21	REPLY by defendant CSS to response to motion for entry of judgment [19-1] (phay) [Entry date 07/03/00]

DATE	DOCKET NUMBER	PROCEEDINGS
7/11/00	22	FINAL JUDGMENT by Judge Joseph H. McKinley Jr. granting dft's motion for entry of judgment [19-1] dismissing case (cc: all counsel) [Entry Date: 7/11/00] (phay)
9/8/00	23	NOTICE OF APPEAL by defendant CSS to USCA re final judgment [22-2] (cc: all counsel) (phay) [Entry date 09/11/00]

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DOCKET No. 00-6239

PEABODY COAL COMPANY; EASTERN ASSOCIATED COAL CORPORATION, PLAINTIFFS-APPELLEES

v.

COMMISSIONER OF SOCIAL SECURITY, KENNETH S. APFEL, DEFENDANT-APPELLANT

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
9/18/00	Civil Case Docketed. Notice filed by Appellant Comm Social Security. Transcript needed: n ❑ (jmb)
10/6/00	TENDERED: petition for hearing en banc from Jeffrey Clair for Appellant Comm Social Security [00-6239] (blh)
10/24/00	PETITION for en banc hearing filed by Jeffrey Clair for Appellant Comm Social Security. Certificate of service date 10/5/00. [00-6239] (blh)
12/6/00	ORDER filed denying petition for en banc hearing [2243347-1] filed by Jeffrey Clair [00-6239]. Entered by order of the court. (blh)

DATE	PROCEEDINGS
1/30/01	PROOF BRIEF filed by Jeffrey Clair for Appellant Comm Social Security. Certificate of service date 1/29/01 Number of Pages: 35. [00-6239] ❑ (lak)
2/16/01	PROOF BRIEF filed by John R. Woodrum for Appellee Eastern Assoc Coal, Appellee Peabody Coal Co, Gross C. Lindsayfor Appellee Eastern Assoc Coal, Appellee Peabody Coal Co. Certificate of service date 2/12/01. Number of Pages: 32. [00-6239] ❑ (lak)
3/2/01	FINAL BRIEF filed by Jeffrey Clair for Appellant Comm Social Security. Copies: 7. Certificate of service date 3/1/01 Number of Pages: 35. [00-6239] (lak)
3/2/01	TENDERED: final reply brief from Jeffrey Clair for Appellant Comm Social Security [00-6239] (lak)
3/2/01	FINAL REPLY BRIEF filed by Jeffrey Clair for Appellant Comm Social Security. Copies: 7 Certificate of service date 3/1/01 Number of Pages: 21. [00-6239] (lak)
3/6/01	FINAL BRIEF filed by John R. Woodrum, Gross C. Lindsay for Appellee Eastern Assoc Coal, Appellee Peabody Coal Co. Copies: 7. Certificate of service date 3/5/01. Number of Pages: 32. [00-6239] (lak)

DATE	PROCEEDINGS
4/12/01	CAUSE SUBMITTED on briefs to panel consisting of Judges Martin, Norris, Quist sitting on 6/13/01. [00-6239] (srw)
6/21/01	Per Curiam OPINION filed: AFFIRMED, decision not for publication pursuant to local rule 28(g) [00-6239]. Boyce F. Martin, Chief Judge, Alan E. Norris, Circuit Judge, Gordon J. Quist, District Judge. (jmb)
8/16/01	MANDATE ISSUED with no cost taxed [00-6239] (lak)
10/15/01	U.S. Supreme Court letter filed: extension ot [*sic*] time within which to file a petition for a writ of certiorari granted to and including 11-18-01 [2438864-1]. [00-6239] (swh)
11/27/01	U.S. Supreme Court notice filed regarding petition for writ of certiorari filed by Appellant Comm Social Security. Filed in the Supreme Court on 11-19-01, Supreme Ct. case number: 01-705. [00-6239] (swh)
1/30/02	U.S. Supreme Court letter filed granting petition for writ of certiorari [2462048-1] filed by Comm Social Security [00-6239]. Filed in the Supreme Court on 01-22-02. (swh)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

CIVIL ACTION No. 4:99CV-201(M)

PEABODY COAL COMPANY AND EASTERN ASSOCIATED COAL CORP., PLAINITIFFS

v.

KENNETH S. APFEL, COMMISSIONER, SOCIAL SECURITY ADMINISTRATION, DEFENDANT

[Filed: Sept. 30, 1999]

COMPLAINT

Plaintiffs, Peabody Coal Company and Eastern Associated Coal Corp., seek an order vacating the assignment to Plaintiffs of certain UMWA Combined Benefit Fund ("Combined Fund") beneficiaries by Defendant, Kenneth S. Apfel, the Commissioner of Social Security ("Commissioner") and certain injunctive relief.

THE PARTIES

1. Plaintiff, Peabody Coal Company ("Peabody Coal"), a corporation duly organized and existing under the laws of the State of Delaware, maintains its principal place of business at 701 Market Street, St. Louis, MO 63101. Peabody Coal is a wholly-owned subsidiary of Peabody Holding Company, Inc.

2. Plaintiff, Eastern Associated Coal Corp. ("EACC") is a West Virginia corporation with its principal place of business at 800 Laidley Tower, Charleston, WV 25324. EACC is a wholly-owned subsidiary of Peabody Holding Company, Inc. Pursuant to section 9704(a) of the Coal Act, Peabody Coal and EACC are jointly and severally liable for the others' Combined Fund beneficiaries.

3. Defendant, Kenneth S. Apfel, maintains his principal office at 6401 Security Boulevard, Baltimore, MD 21235 where, as Commissioner, he presides over the Social Security Administration ("SSA"), a federal agency that administers and enforces various programs and performs functions throughout the United States. The Commissioner is responsible under the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701-9722, ("Coal Act" or "Act") for assigning Combined Fund beneficiaries to signatory operators (and their related persons) in accordance with section 9706 of the Act and for calculating health benefit premiums covering assigned beneficiaries. The Commissioner has delegated his responsibilities for making beneficiary assignments to administrators at SSA's regional service centers.

JURISDICTION AND VENUE

4. Subject matter jurisdiction is proper pursuant to 28 U.S.C. §§ 1331, 2201; 26 U.S.C. §§ 9706(f), 9721; and 5 U.S.C. §§ 701-706.

5. Venue is proper pursuant to 28 U.S.C. § 1391(e). Peabody Coal maintains an office at 1951 Barrett Court, Henderson, Kentucky 42420-1990 within this judicial district which through 1995 served as its corporate headquarters, has conducted and continues to conduct

mining operations in this district, and substantial activities relating to SSA's assignment of beneficiaries to Peabody Coal occurred in this district.

THE COAL ACT

6. The Coal Act required the Commissioner to assign certain coal industry retirees to signatory operators, or, where the signatory operator was no longer in business to the signatory operator's related person. 26 U.S.C. § 9706(a). Each such signatory operator is required to pay annual per-beneficiary health and death premiums to the Combined Fund for each beneficiary assigned to it by SSA. 26 U.S.C. § 9704(a).

7. A signatory operator is statutorily defined to include a person which is or was a signatory to a National Bituminous Coal Wage Agreement ("NBCWA"). 26 U.S.C. § 9701(c)(1).

8. A related person refers to, among other things, a person who is a member of a controlled group of corporations that includes a signatory operator, a trade or business under common control with such signatory operator, a partner (other than a limited partner) or joint venturer with such signatory operator, or is a successor in interest to a related person of such signatory operator. 26 U.S.C. § 9701(c)(2)(A).

9. The date for determining related person status is the date immediately proceeding the date the signatory operator ceased to be in business, or July 20, 1992, whichever occurred first. 26 U.S.C. § 9701(c)(2)(B).

10. Each Plaintiff herein is a signatory operator within the meaning of the Coal Act.

11. A signatory operator is considered in business if it conducts or derives revenue from any business activity. 26 U.S.C. § 9701(c)(7).

12. The Commissioner was required to prioritize eligible beneficiaries when making Coal Act assignments. The Commissioner was to assign an eligible coal industry retiree first to a signatory operator (or its active related person) that signed the 1978 NBCWA and was the most recent signatory operator to employ the coal industry retiree in the coal industry for at least two years ("Priority One"). 26 U.S.C. § 9706(a)(1).

13. If an assignment was not possible under Priority One, the Commissioner was to assign the retiree to an operator (or its active related person) that signed the 1978 NBCWA and was the most recent signatory operator to employ the retiree in the coal industry ("Priority Two"). 26 U.S.C. § 9706(a)(2).

14. If the beneficiary could not be assigned under Priority One or Priority Two, the Commissioner was required to assign the retiree to the pre-1978 signatory operator (or its active related person) that employed the retiree in the coal industry for the longest period of time prior to the effective date of the 1978 NBCWA ("Priority Three"). 26 U.S.C. § 9706(a)(3).

EASTERN ENTERPRISES V. APFEL

15. In *Eastern Enterprises v. Apfel*, 118 S. Ct. 2131 (1998), the Supreme Court held that Priority Three assignments were unconstitutional as violative of the Fifth Amendment of the U.S. Constitution as applied to Eastern Enterprises ("Eastern"). A four Justice plurality held that the Act violated the Takings Clause, *id.* at 2144-53, while a fifth Justice, Justice Kennedy, concurred in the judgment of the Court and wrote a

separate opinion (dissenting in part), which found that the Coal Act violated the Due Process Clause.

16. The plurality and Justice Kennedy both based their holdings on the fact Eastern ceased its coal mining operations in 1965–years before the first promise of lifetime benefits to miners was made in the 1974 NBCWA and subsequent NCBWAs. *Id.* at 2150, 2159.

17. After the Supreme Court issued its judgment in *Eastern* in June 1998, the Commissioner voided the assignments of beneficiaries under the Coal Act to numerous former coal operators which had previously been assigned beneficiaries under Priority Three and were similarly situated to Eastern.

COUNT I
(Peabody Coal)
Request for Declaratory Judgment that Peabody Coal is not a Related Person to Tecumseh

18. Peabody Coal restates and herein incorporates by reference Paragraphs 1 through 17 of the Complaint.

19. By various letters in 1993 and 1995, the Commissioner assigned beneficiaries to Peabody Coal who had actually worked for Tecumseh Coal Company ("Tecumseh"), the latter a signatory operator through 1965 that still remains in business within the meaning of section 9701(c)(7) of the Act.

20. The Commissioner assigned the Tecumseh retirees (and their eligible dependents) (collectively the "Tecumseh Beneficiaries") to Peabody Coal because SSA erroneously determined Peabody Coal is a related person to Tecumseh within the meaning of section 9701(c)(2) of the Coal Act. (The Tecumseh Beneficiaries are listed on Attachment A).

21. As of July 20, 1992, Peabody Coal owned only 50% of Tecumseh's outstanding shares, and therefore, (i) was not in a controlled group of corporations with Tecumseh; (ii) was not a trade or business under common control with Tecumseh; (iii) was not a partner of nor a joint venturer with Tecumseh; and, (iv) was not a successor in interest to an entity that was a related person to Tecumseh.

22. Peabody Coal is not a related person to Tecumseh as that term is defined in the Coal Act.

23. On February 3, 1999, Peabody Coal requested the Commissioner to withdraw his assignment of the Tecumseh Beneficiaries to Peabody Coal because Peabody Coal is not a related person to Tecumseh, and because the assignments violate the Fifth Amendment as set forth in *Eastern*. The Commissioner has failed or refused to withdraw the assignment of the Tecumseh Beneficiaries to Peabody Coal.

24. SSA's assignments of the Tecumseh Beneficiaries to Peabody Coal are void and must be vacated and reversed because Peabody Coal is not a related person to Tecumseh and such assignments exceed SSA's authority under the Coal Act and are erroneous as a matter of law.

COUNT II
(Peabody Coal)
Request for a Declaratory Judgment that the Assignment of the Tecumseh Beneficiaries to Peabody Coal Violates the Fifth Amendment

25. Peabody Coal restates and herein incorporates by reference Paragraphs 1 through 24 of the Complaint.

26. With respect to the Tecumseh Beneficiaries, the Supreme Court's decision in *Eastern* compels the conclusion that the Coal Act is unconstitutional as applied to Peabody Coal. Constitutionally, Tecumseh's factual situation is indistinguishable from that which the Supreme Court considered in *Eastern*. Like Eastern, Tecumseh ceased employing UMWA-represented miners in 1965. Like the beneficiaries assigned to Eastern, the Tecumseh Beneficiaries were assigned under Priority Three.

27. Inasmuch as the Commissioner's assignment of the Tecumseh Beneficiaries to Peabody Coal is indistinguishable from the Commissioner's assignments to Eastern, such assignments violate Peabody Coal's rights in violation of the Fifth Amendment.

COUNT III
(Peabody Coal)
Request for Declaratory Judgment that the Commissioner's Refusal to Withdraw the Tecumseh Beneficiaries Violates the Administrative Procedure Act

28. Peabody Coal restates and herein incorporates by reference Paragraphs 1 through 27 of the Complaint.

29. By letter dated February 3, 1999, Peabody Coal requested the Commissioner to void the assignment of the Tecumseh Beneficiaries as required by the Supreme Court's decision in *Eastern*.

30. The Commissioner has failed and refused to respond to Peabody Coal's request and has failed and refused to withdraw the assignment to Peabody Coal of the Tecumseh Beneficiaries.

31. Pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701 *et seq.*, the Commissioner's decision to adopt the Court's rationale in *Eastern* and to apply it to similarly situated assigned operators, but not to Peabody Coal, is arbitrary and capricious, an abuse of discretion, and not in accordance with law.

COUNT IV
(Peabody Coal and EACC)
Request for Declaratory Judgment Invalidating Beneficiary Assignments Made to Peabody Coal and EACC after September 30, 1993

32. Plaintiffs restate and herein incorporate by reference Paragraphs 1 through 31.

33. Section 9706(a) of the Coal Act required the Commissioner to assign Combined Fund beneficiaries to a signatory operator (or its active related person) before October 1, 1993.

34. Where the Commissioner could not assign a beneficiary to a signatory operator (or its active related person) by October 1, 1993, such beneficiary was to be placed in the unassigned beneficiary pool ("Unassigned Pool").

35. Premiums for beneficiaries in the Unassigned Pool are paid from transfer payments made to the Combined Fund from the 1950 UMWA Pension Plan (26 U.S.C. § 9705(a)), or from the Abandoned Mine Land Reclamation Fund managed by the Secretary of the Department of Interior (26 U.S.C. § 9705(b), 30 U.S.C. § 1242(h)). Should such transfers prove inadequate, the cost of providing benefits to beneficiaries in the Unassigned Pool is to be shared pro rata by all assigned operators (26 U.S.C. § 9704(d)).

36. The Commissioner, in violation of his authority under section 9706(a), assigned Coal Act beneficiaries to Peabody Coal and EACC from the Unassigned Pool after September 30, 1993.

37. The Commissioner's assignment to Plaintiffs of beneficiaries from the Unassigned Pool after September 30, 1993 violates the Sixth Circuit Court of Appeals' decision in the case of *Dixie Fuel Co. v. Apfel*, 171 F.3d 1052 (6th Cir. 1999), which held that the Commissioner is without authority to assign beneficiaries from the Unassigned Pool after September 30, 1993.

38. Plaintiffs, for purposes of the instant action, are similarly situated to Dixie Fuel.

39. The Commissioner has failed or refused to apply the Court's ruling in *Dixie Fuel* to Plaintiffs.

40. The Commissioner's decision to not withdraw beneficiaries assigned to Plaintiffs from the Unassigned Pool after September 30, 1993 violates section 9706(a) of the Coal Act, and also sections 702 and 706(2)(C) of the APA because it is not in accordance with law, and constitutes an abuse of discretion.

COUNT V

(Peabody Coal and EACC)
Request for Injunctive Relief Barring Future Assignments from the Unassigned Pool

41. Plaintiffs restate and herein incorporate by reference the allegations of Paragraphs 1 through 40 of the Complaint.

42. The Commissioner's assignment to Peabody Coal and EACC of beneficiaries from the Unassigned Pool after September 30, 1993 exceeds the scope of his

statutory authority and violates the Sixth Circuits Court of Appeals' decision in *Dixie Fuel Co. v. Apfel.*

43. Notwithstanding his existing violations of the statutory mandate barring assignments from the Unassigned Pool, upon information and belief, the Commissioner intends in the near future to continue making Coal Act assignments to Plaintiffs.

44. Continued assignments from the Unassigned Pool violate the APA, the Coal Act and binding Sixth Circuit precedent and sanction the use of injunctive powers to permanently bar the Commissioner from making such assignments to Peabody Coal and EACC in the future.

COUNT VI

(Peabody Coal and EACC)
Declaration Invalidating the Coal Act Assignments of George Weaver, Bude Jarvis, William Barnett, Jewell Peterson, Jack Callor, Jarrett Shrewsbury, Michael Restic and Lovell Kelley

45. Plaintiffs restate and herein incorporate by reference the allegations of Paragraphs 1 through 44 of the Complaint.

46. The Coal Act's assignment hierarchy requires the Commissioner to first assign UMWA retirees to a coal operator (or its related person) that signed the 1978 NBCWA and was the most recent signatory operator to employ the coal industry retiree in the coal industry for at least two years (Priority One). 26 U.S.C. § 9706(a)(1). Only where the Commissioner is unable to identify such an operator may an assignment be made under Priority Two to a signatory to the 1978

NBCWA that employed the miner for less than two years. 26 U.S.C. § 9706(a)(2).

47. The Commissioner assigned George Weaver and Bude Jarvis to EACC and William Barnett to Peabody Coal under Priority Two. Plaintiffs filed timely reconsideration requests providing documentary evidence establishing these miners were properly assignable under Priority One to unrelated signatory operators (or their active related persons) that signed the 1978 NBCWA and were the most recent signatory operators to have employed them for at least two years.

48. This notwithstanding, by final decision letters respectively dated June 17, 1996, April 14, 1997, and April 2, 1997 the Commissioner refused to withdraw the assignments of Messrs. Weaver, Jarvis and Barnett.

49. The Commissioner assigned Jarrett Shrewsbury to EACC and Jewell Peterson and Jack Callor to Peabody Coal under Priority One. EACC and Peabody Coal filed timely reconsideration requests establishing that they were properly assigned under Priority One to an unrelated signatory operator that subsequently employed them for more than two years.

50. This notwithstanding, by final decision letters respectively dated June 17, 1996, July 11, 1995 and May 29, 1995 the Commissioner refused to withdraw the assignment of Messrs. Shrewsbury, Peterson and Callor.

51. Messrs. Weaver, Jarvis, Barnette [*sic*], Shrewsbury, Peterson and Callor would not have been assigned to Plaintiffs if the Commissioner had followed the assignment priority scheme mandated by the Coal Act, and their assignment to Peabody Coal and EACC therefore violates section 9706 of the Coal Act.

52. In applying the Coal Act assignment hierarchy the Commissioner was not permitted to take into account time worked in supervisory jobs or other tasks not covered under applicable NBCWAs.

53. The Commissioner assigned Michael Restic and Virgil Kelley to EACC which timely filed reconsideration requests along with documentary evidence establishing Mr. Restic never performed classified work for EACC and Mr. Kelley retired from the coal industry a year before he received the $18 payment prompting the Commissioner's assignment.

54. This notwithstanding, by final decision letter dated June 17, 1996, the Commissioner refused to withdraw the assignments of Messrs. Restic and Kelley.

55. The Commissioner's final determinations affirming the assignments to Peabody and EACC of the coal industry retirees referenced in Paragraphs 47-54 above violate the Coal Act and the APA; they fail to follow the assignment scheme mandated by the Coal Act, impermissibly shift the burden of persuasion, are arbitrary, capricious, an abuse of discretion, not in accordance with law, unwarranted by the facts, unsupported by the evidence, plainly erroneous and contain errors apparent from the face of the Commissioner's own records and/or from other information he was required to consider.

56. The Commissioner's final determinations have caused Peabody Coal and EACC to incur Combined Fund premium obligations and other expenses and harm that they would not have incurred had the Commissioner properly performed his duties under the Coal Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendant and pray for the following relief:

1. An Order that declares that Peabody Coal (or any other entity or person related to, or affiliated with Peabody Coal) is not a related person to Tecumseh within the meaning of section 9701(c)(2), and that the assignment of the Tecumseh Beneficiaries listed on Attachment A violates the Coal Act.

2. An Order that declares that the Coal Act, as applied to the assignment of the Tecumseh Beneficiaries to Peabody Coal, violates the Fifth Amendment of the U.S. Constitution.

3. An Order that directs the Commissioner to withdraw the assignment of all Tecumseh Beneficiaries to Peabody Coal and that directs the Commissioner to inform the Combined Fund that such assignments have been withdrawn.

4. An Order declaring the Commissioner's assignments to Peabody Coal and EACC from the Unassigned Pool after September 30, 1993 are void and in violation of section 9706(a) of the Coal Act.

5. An Order enjoining the Commissioner from making any future Coal Act assignments from the Unassigned Pool to Peabody Coal and EACC (or any other entity or person related to, or affiliated with either Plaintiff.)

6. An Order declaring that the Commissioner's decision not to withdraw assignments made to Peabody Coal and EACC from the Unassigned Pool after September 30, 1993 violates section 702 of the APA.

7. An Order declaring that the Commissioner's policy of making assignments from the Unassigned Pool to Peabody Coal and EACC after September 30, 1993 is in excess of his statutory jurisdiction and properly set aside pursuant to section 706(2)(C) of the APA.

8. An Order that requires the Commissioner to inform the Combined Fund that the assignments to Peabody Coal and EACC from the Unassigned Pool have been withdrawn.

9. An Order that declares that the Commissioner's assignment of Messrs. Barnett, Peterson and Callor to Peabody Coal and Messrs. Weaver, Jarvis, Shrewsbury, Restic, and Kelley to EACC violates section 9706(a) of the Coal Act and the APA.

10. Such additional relief as this Court deems equitable and just.

Respectfully submitted,

ILLEGIBLE SIGNATURE
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Heenan, Althen & Roles
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Washington, D.C. 20005

Dated: September 30, 1999

Attachment A

Tecumseh Beneficiaries

Matthews, Hobeart
Matthews, Mildred

Wilson, Frank H.
Wilson, Etta

Osborne, James P.
Osborne, Myrtle

Eifler, Theodore R.
Eifler, Mabel

Boyer, Charles R.
Boyer, Margaret

Baker, Gilbert M.
Baker, Lorean

Scheucher, Thomas E.
Scheucher, Hattie

Garrison, Harold L.
Garrison, Leona

Hart, Walter
Hart, Evelyn H.

Gentry, Lloyd B.

Madden, Charles B.
Madden, Jewel M.

Gentry, Burless
Gentry, Geneva

Clinton, Chumbley T.

Brown, Willie L.
Brown, Ruth E.

Speicher, Raymond
Speicher, Sarah F.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

CIVIL ACTION No. 4:99CV-201-M

PEABODY COAL COMPANY, ET AL., PLAINTIFFS

v.

KENNETH S. APFEL, COMMISSIONER, SOCIAL SECURITY ADMINISTRATION, DEFENDANT

AFFIDAVIT OF DANNY R. MORIARTY

I, Danny R. Moriarty, after being duly sworn, state:

1. I am the Director—Cost Containment for the Peabody Group. My office address is Peabody Holding Co., Inc., 701 Market Street, Suite 700, St. Louis, MO 63101-1826.

2. As the Director—Cost Containment, my responsibilites include overseeing the processing of assignments made by the Commissioner of Social Security ("Commissioner") to Peabody Coal Company ("Peabody") and Eastern Associated Coal Corp. ("EACC"), under the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act"), 26 U.S.C. §§ 9701-9722.

3. Following the Sixth Circuit Court of Appeal's ruling in *Dixie Fuel Co. v. Apfel*, 171 F.3d 1052 (6th Cir. 1999), I mailed letters dated May 25, 1999, to the Social Security Administration ("SSA") to establish whether the Commissioner had made initial Coal Act assignments to Peabody and EACC after September 30, 1993

from SSA'S unassigned pool in a manner materially indistinguishable from the assignments invalidated by the Court in *Dixie Fuel*. SSA's response to my letters are set forth below.

4. I received a letter dated June 15, 1999 from Darrell Blevins, SSA's Freedom of Information Officer, confirming that SSA's Northeastern regional service center had made sixty-seven (67) assignments to Peabody from the unassigned pool. (A true and correct copy of such letter is attached hereto as Exhibit 1.)

5. I received a letter dated June 17, 1999 from Mr. Blevins confirming that SSA's Northeastern regional service center had made four (4) assignments to EACC from SSA's unassigned pool. (A true and correct copy of such letter is attached as Exhibit 2).

6. I received a separate letter dated June 17, 1999 from Mr. Blevins confirming that SSA's Southeastern regional service center had made one hundred ninety seven (197) assignments to Peabody Coal Company from SSA's unassigned pool. (A true and correct copy of said letter is attached as Exhibit 3.)

7. I received a letter dated June 17, 1999 from Mr. Blevins, confirming, that SSA's Southeastern regional service center had made seven (7) assignments to EACC from SSA's unassigned pool. (A true and correct copy of said letter is attached hereto as Exhibit 4.)

8. More recently, I received a separate letter dated January 3, 2000 from Mr. Blevins, confirming that SSA's Great Lakes regional service center had made fifty-five (55) assignments to Peabody from SSA's unassigned pool. (A true and correct copy of said letter is attached as Exhibit 5.)

9. Upon information and belief there may be additional assignments to Peabody and EACC from SSA's unassigned pool.

10. The documentation and information provided in the Exhibit are true and accurate to my best information, knowledge and belief.

Further this affiant saith not.

/s/ DANNY R. MORIARTY
DANNY R. MORIARTY

My Commission Expires: 12-22-02

[Seal Omitted]

SOCIAL SECURITY

Refer to: TASC-NY 5451

June 17, 1999

Mr. Danny R. Moriarty
Peabody Group
701 Market Street, Suite 700
St. Louis, MO 63101-1826

RE: Peabody Coal Company

Dear Mr. Moriarty:

I am writing in response to your letter of May 25, 1999 to the Southeastern Program Service Center (PSC) requesting information under the Coal Industry Retiree Heath Benefit Act of 1992 (the Coal Act). Your letter was transferred to me because of my responsibilities under the Freedom of Information Act.

You enclosed with your letter listings of retired miners who were assigned to Peabody Coal Company by Southeastern PSC and Western PSC after October, 1993, and you asked for the name of the company to which the miners were previously assigned. I have enclosed 10 pages containing this information, as well as two pages containing the names of those miners included in the lists you sent who are no longer assigned to Peabody Coal Company.

You also asked for the same information about three miners assigned by Western PSC, Donald J. Dugger, Gabriele Fiaoni, and William A. Simmons. All of these miners were assigned to Peabody Coal Company in the initial round of assignments. The fourth miner on this

list, Charlie Roberts, was assigned by Northeastern PSC in the initial round of assignments. None of these miners has ever been assigned to another company.

Sincerely,

/s/ DARRELL BLEVINS
DARRELL BLEVINS
Freedom of Information Officer

Enclosure

EIN: 13-2606920 Page 1 of 12

SEPSC/WNPSC Miners No Longer Assigned to Peabody Coal Company

Miner

Thomas, Billy T.
Lewis, Harding
Polk, James C.
Myers, Thomas S.
Ausbine, Roy R.
McNeely, Arnold E.
Martin, Floyd
Hawk, Bill
Jordan, Oliver J.
Perry, Willie C.
Smith, J.
Cotton, Arvil
Martin, James P.
Wright, Lucas L.
Cross, Arvel
Wilson, Carlie
Strunk, Delmus E.
McKinney, Eugene G.
Owens, Willie B.
Roberts, Ed
Pennington, James
Johnson, Edgar H.
Daugherty, Fred F.
Marcum, Fred B.
Hatmaker, Floyd O.
Huffman, Erby, F.
Boggess, Pete M.
Gilbert, Clarence A.

Lowe, Lon L.
Collingsworth, Bayless L.
Hatmaker, Marion
Nighbert, Lloyd E.
Thompson, Millard G.
Beach, Charles F.
Ellis, Milford E.
Phillips, Richard E.
Wright, Claude R.
Hatmaker, Leon
Sexton, Eamer
Smith, Lindsay K.
Hatmaker, Fred
Childress, Dewey
Adkins, Floyd
Wright, Ed
Cross, Marion T.
Pressnel, Roy
McLin, George D.

EIN: 13-2606920 Page 2 of 12

Previously Assigned Coal Operators for Miners Assigned to Peabody Coal Co. by SEPSC Letter Dated 06/30/95

MINER	PREVIOUSLY ASSIGNED OPERATOR
Phillips, J.	Island Creek Coal Co.
Denson, Marion P.	Floyd Mining Co., Inc.
Ford, Edward D.	Island Creek Coal Co.
Steele, Roy B.	Mid-Continent Coal & Coke Co.
Hooker, Sidney	Harlan Wallins Coal Corp.

EIN: 13-2606920 Page 3 of 12

Previously Assigned Coal Operators for Miners Assigned to Peabody Coal Co. by WNPSC Letter Dated 06/30/95

MINER	PREVIOUSLY ASSIGNED OPERATOR
Edwards, James O.	Floyd Mining Co., Inc.
Wheeler, John J.	General Motors Corp.
Engle, Arthur	Templeton Coal Co.
Slover, John F.	Templeton Coal Co.
Pigford, Matthew	Mid-Continent Coal & Coke Co.
Lawson, Malcolm	Yocum Creek Coal Co.
Dotson, Thelmer J.	Harlan Wallins Coal Corp.

EIN: 13-2606920 Page 4 of 12

Previously Assigned Coal Operators for Miners Assigned to Peabody Coal Co. by SEPSC Letter Dated 09/20/95

MINER	PREVIOUSLY ASSIGNED OPERATOR
Brooks, Clyde M.	Not previously assigned
Nickell, Crowder N.	Not previously assigned

EIN: 13-2606920 Page 5 of 12

Previously Assigned Coal Operators for Miners Assigned to Peabody Coal Co. by WNPSC Letter Dated 09/20/95

MINER	PREVIOUSLY ASSIGNED OPERATOR
Raney, Stanley	Inland Steel Co.
Barnett, William	Westmoreland Coal Co.
Teague, Craig G.	Four Leaf Coal Co.

EIN: 13-2606920 Page 6 of 12

Previously Assigned Coal Operators for Miners Assigned to Peabody Coal Co. by SEPSC Letter Dated 09/16/96

MINER	PREVIOUSLY ASSIGNED OPERATOR
Timko, Henry M.	Not previously assigned
Ippolito, John A.	Not previously assigned
Broutin, Alfred	Not previously assigned
Urbon, Carl	Not previously assigned
Barwick, John M.	Consolidation Coal Co.
Webb, Lloyd T.	Not previously assigned
Metz, Elmer	Not previously assigned
Berta, Charles	Not previously assigned
Germann, Lewis J.	Not previously assigned
Zara, James	Not previously assigned
Dove, Sethie L.	Not previously assigned
McEnary, John E.	Not previously assigned
Middleton, Woodrow	Not previously assigned
Franklin, Otis	Drummond Coal Sales, Inc.
Ryder, John D.	Not previously assigned
Farris, Thomas R.	Not previously assigned
Miles, Robert P.	Not previously assigned
Olson, Lavern A.	Not previously assigned
Ainscough, Otis	Not previously assigned
Brown, Harold P.	Not previously assigned
Leek, Carl H.	Consolidation Coal Co.
Vineyard, Hoyt H.	Not previously assigned
Overbay, Claude	Not previously assigned
Brown, Roscoe W.	Not previously assigned
Vaughn, Zeather D.	Not previously assigned

Sturdivant, Joseph	Not previously assigned
Bailey, Claude A.	Not previously assigned
King, Carl B.	Not previously assigned
Wood, John F.	Not previously assigned
Anthony, Foley D.	Not previously assigned
Haga, James F.	Not previously assigned
Anthony, Avery F.	Not previously assigned
Reed, Haven	Not previously assigned
McBride, Clownie A.	Not previously assigned
Harp, Richard	Eastern Enterprises
Clover, E. A.	Not previously assigned
Gentry, Russell	Not previously assigned
Norton, James L.	Not previously assigned
Griffin, Earl G.	Not previously assigned
Euriga, Mike	Not previously assigned
Archer, Cecil S.	Consolidation Coal Co.
Peck, Arthur	Not previously assigned
Davis, Robert L.	Not previously assigned
Smith, George	Not previously assigned

EIN: 13-2606920 Page 7 of 12

Previously Assigned Coal Operators for Miners Assigned to Peabody Coal Co. by SEPSC Letter Dated 09/16/96 (cont.)

MINER	PREVIOUSLY ASSIGNED OPERATOR
Parks, Homer D.	Not previously assigned
Lievens, Peter F.	Not previously assigned
Preston, Clarence J.	Not previously assigned
Gilbert, Buford	Not previously assigned
Miracle, V.	Not previously assigned
Wagner, Dan	Not previously assigned
Ellis, Norman	Not previously assigned
Elliott, John	Not previously assigned
Lane, Henlin	Not previously assigned
Stewart, Wiley P.	Harlan Wallins Coal Corp.
Mink, George	Not previously assigned
Carter, Clevis	Not previously assigned
Vanover, Homer	Not previously assigned
Brock, Farmer	Not previously assigned
Jones, John H.	Not previously assigned
Saylor, Otis	Not previously assigned
Lawson, Lawrence J.	Not previously assigned
Collett, Blevins	Not previously assigned
Elliott, Simon	Not previously assigned
Silcox, Paul	Not previously assigned
Nix, Thurman	Not previously assigned
Davis, Chalmer	Not previously assigned
Cickie, Frank	Not previously assigned
Bays, R.	Not previously assigned
Collins, James O.	Not previously assigned

Stamper, Everett	Rocket Coal Co., Inc.
Knuckles, Albert	Not previously assigned
Peace, Tom	Not previously assigned
Douglas, Floyd W.	Not previously assigned
Marlow, Duff	Not previously assigned
Douglas, Spencer	Not previously assigned
Chadwell, James L.	Not previously assigned
Petrey, Clefton E.	Not previously assigned
Queener, Francis C.	Not previously assigned
Austin, John M.	Not previously assigned
Davis, George F.	Not previously assigned
Gordon , Robert	Not previously assigned
Bob Ruthaford	Not previously assigned
Gibson, Claude	Not previously assigned
Davis, Theodore L.	Not previously assigned
Queener, Arthur C.	Not previously assigned
Rutherford, Noah S.	Not previously assigned
Leach, William E.	Not previously assigned
Cuel, Frank A.	Not previously assigned

Previously Assigned Coal Operators for Miners Assigned to Peabody Coal Co. by SEPSC Letter Dated 09/16/96 (cont.)

MINER	PREVIOUSLY ASSIGNED OPERATOR
Albertini, Pete	Not previously assigned
Ridenour, Millard	Not previously assigned
Thomas, Clyde	Not previously assigned
King, Everett	Not previously assigned
Douglas, Charles F.	Not previously assigned
Weaver, Hersul	Not previously assigned
Morris, James B.	Not previously assigned

Previously Assigned Coal Operators for Miners Assigned to Peabody Coal Co. by WNPSC Letter Dated 09/16/96

MINER	SSN	PREVIOUSLY ASSIGNED OPERATOR
Bragg, Viven D.		Not previously assigned
Lorenzini, John		Not previously assigned
Beadle, Ernest E.		Not previously assigned
Walter, Clarence		Not previously assigned
Atmore, Henry L.		Not previously assigned
Simpson, Walter		Not previously assigned
Smiley, Carl		Not previously assigned
Palulis, Stanley		Not previously assigned
Sincavage, Joe		Not previously assigned
Matulevich, Bernard		Not previously assigned
Segers, Laurel W.		Not previously assigned
Jeter, Kenneson J.		Not previously assigned
Puckett, Carl		Not previously assigned
Mann, Elmer J.		Not previously assigned
Lampley, Earl		Not previously assigned
Furlow, N. L.		Peabody Coal Co.*

(*Miner was assigned to Peabody under incomplete EIN 13-260920; computer letter dated 9/28/93 was incomplete and undeliverable. WNPSC added Round 1 miner to Round 4 notice.)

Willhouse, Ben F.		Not previously assigned
Bovinet, Othal D.		Not previously assigned
Pattarozzi, Andrew		Not previously assigned
Halburnt, Henry		Not previously assigned
George, Frank E.		Not previously assigned

Reed, Raymond W.	Blue Diamond Coal Co.
Eskins, Virgil	Not previously assigned
Carr, Arthur	Not previously assigned
McMillen, Ted	Not previously assigned
Bodart, Frank	Not previously assigned
Pataki, Elmer A.	Not previously assigned
Hornberger, Robert L.	Not previously assigned
Barrington, James	Not previously assigned
Hall, M.	Not previously assigned
Schanuel, John F.	Not previously assigned
Rurode, Walter H.	Not previously assigned
Neff, Bud	Not previously assigned
Noe, William H.	Blue Diamond Coal Co.
Pendleton, Joseph E.	Not previously assigned
Halsey, Paul K.	Latrobe Construction Co.
Phelps, Marion E.	Not previously assigned
Grizzel, Robert S.	Not previously assigned
Clark, Joseph	Not previously assigned
White, Paul	Not previously assigned
Hartwell, Charles W.	Not previously assigned

Previously Assigned Coal Operators for Miners Assigned to Peabody Coal Co. by WNPSC Letter Dated 09/16/96 (cont.)

Billings, William R.	Eastern Associated Coal Corp.
Dalton, Luther W.	Not previously assigned
Goad, Guy O.	Not previously assigned
Ashworth, Cloyse H.	Not previously assigned
Scott, G.	Island Creek Coal Co.
Clark, Bennie E.	Not previously assigned
Barnhart, John A.	Davon, Inc.
Taylor, Cyrus	Not previously assigned
Weaver, Clayton E.	Not previously assigned
Mussatto, Dominick	Not previously assigned
Wells, Wilson	Not previously assigned
Quinn, Harlan E.	Not previously assigned
Story, Melvin	Not previously assigned
Frischman, John M.	Not previously assigned

Hickman, John E.	Not previously assigned
Pizzola, William M.	Not previously assigned
Gore, Roy M.	Not previously assigned
Tucker, Clifton E.	Not previously assigned
Hammond, James H.	Not previously assigned
Lindley, Lance D.	Not previously assigned
Valentine, Aust	Not previously assigned
Willey, Harold M.	Zeigler Coal Co.
Chubb, Jack L.*	Peabody Coal Co.

(*WNPSC assigned Chubb to Peabody in Round 1, in letter dated 10/08/93. Upon review, WNPSC determined that assignment to Peabody was correct but assignment basis was incorrect. Instead of correcting assignment basis, WNPSC sent new assignment letter in Round 4, 09/16/96.)

Heil, Henry L.	Not previously assigned
Salmond, Robert J.	Not previously assigned
Saylor, Cecil	Not previously assigned
Manes, J.	Not previously assigned
Stewart, Wesley J.	Not previously assigned
Davis, Solmon	Not previously assigned
Petree, Simon	Not previously assigned
Bennett, Vernon	Not previously assigned
Henderson, Floyd	Blue Diamond Coal Co.
Wilson, Woodrow	Not previously assigned
Jessee, Thomas E.	Not previously assigned
Roark, Woodrow	Not previously assigned
Powers, George	Not previously assigned
Huddleston, Arthur S.	Blue Diamond Coal Co.
Parker, Ernest E.	Not previously assigned
Jackson, George L.	Not previously assigned

Previously Assigned Coal Operators for Miners Assigned to Peabody Coal Co. by WNPSC Letter Dated 09/16/96 (cont.)

Jackson, George L.	Not previously assigned
Chitwood, James E.	Not previously assigned
Hicks, Roy	Not previously assigned
Walker, Coble	Not previously assigned
Asher, Melvin	Not previously assigned
Patterson, Oscar	Not previously assigned
Collett, Finley	Not previously assigned
Carter, Hesper	Not previously assigned
Murray, Jessie E.	Not previously assigned
Evans, Edward S.	Not previously assigned
Asher, Asberry	Not previously assigned
Botkins, George E.	Not previously assigned
Hibbard, Willie	Not previously assigned
Wilson, Clabe C.	Not previously assigned
Monday, Dewey C.	Not previously assigned
Williamson, Robert W.	Not previously assigned
Weaver, Virgil C.	Not previously assigned
Tippitt, Edison	Not previously assigned
King, George W.	Not previously assigned
Campbell, Jessie L.	Not previously assigned
Hurst, Sterling S.	Not previously assigned
Hamblin, John E.	Not previously assigned
Douglas, Marshall H.	Not previously assigned
McNealy, Elmer	Not previously assigned

Brown, Elmer*	Not previously assigned

(*Incorrectly shown as Emmer Grown in prior correspondence)

Massey, Wade	Not previously assigned
Weaver, Judd	Not previously assigned
Hatfield, James M.	Blue Diamond Coal Co.
Sharp, James W.	Not previously assigned
Gilburth, Charles	Not previously assigned
Ellison, Ulysses H.	Not previously assigned
Byrge, Deles	Not previously assigned
Bean, Charles H.	Not previously assigned
Hatmaker, Edd M.	Not previously assigned
Perkins, Elbert	Not previously assigned
Lovett, Grance	Not previously assigned
Jorman, Joseph J.	Not previously assigned
Hawkins, Walter M.	Not previously assigned
Keathley, Rufus	Blue Diamond Coal Co.
Silcox, Forster	Blue Diamond Coal Co.
Maffioli, Frank	Not previously assigned

EIN: 13-2606920 Page 12 of 12

Previously Assigned Coal Operators for Miners Assigned to Peabody Coal Co. by SEPSC Letter Dated 09/22/97

MINER	SSN	PREVIOUSLY ASSIGNED OPERATOR
Knight, Fred A.		Consolidation Coal Co.
Dudley, Edd		Consolidation Coal Co.
Baird, J.W.		Blue Diamond Coal Co.
Henry, Walter G.		Consolidation Coal Co.
Ball, John		Yocum Creek Coal Co.
		Blue Diamond Coal Co.
Haviland, Albert M.		L.G. Wasson Coal Mining Corp.
Penman, James		Princeton Mining Co.
Lovitt, W.C.		Blue Diamond Coal Co.
McDonald, Louis M.		Consolidation Coal Co.
Simpson, Charlie L.		Blue Diamond Coal Co.
Rowe, Virgil G.		Blue Diamond Coal Co.
Goodman, Lawrence M.		Blue Diamond Coal Co.
Cooper, Talmage		Blue Diamond Coal Co.
Brown, General		Blue Diamond Coal Co.
Barnes, John		Not previously assigned
Walp. Earl		Blue Diamond Coal Co.
Elmore, J.		Blue Diamond Coal Co.
Baird, Zeb D.		Consolidation Coal Co.
Cordell, Hugh		Blue Diamond Coal Co.
McGhee, Odis A.		Blue Diamond Coal Co.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

CIVIL ACTION #4:99CV-201(M)

PEABODY COAL COMPANY, ET AL., PLAINTIFFS

v.

KENNETH S. APFEL, COMMISSIONER, SOCIAL SECURITY, DEFENDANT

DEFENDANT'S ANSWER TO COUNTS IV-VI OF PLAINTIFFS' COMPLAINT[1]

Defendant, Kenneth S. Apfel, Commissioner of the Social Security Administration, answers the Complaint for Declaratory and Injunctive Relief of Plaintiffs, Peabody Coal Company and Eastern ("EACC") as follows:

First Defense

Plaintiffs have failed to join parties needed for just adjudication under Rule 19.

Second Defense

Plaintiffs' claim is barred in part by the doctrine of laches.

---

[1] Pursuant to the parties' joint Stipulation of Dismissal Without Prejudice, the Court dismissed Counts I-III of plaintiffs' complaint by order dated February 8, 2000.

Third Defense

In response to the numbered paragraphs of the Complaint, Defendant states as follows:

THE PARTIES

1. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in this paragraph.

2. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in this paragraph.

3. Defendant admits the allegations contained in paragraph 3.

JURISDICTION AND VENUE

4. Paragraph four contains plaintiffs' legal conclusions, to which no response is required.

5. The first sentence of paragraph five contains plaintiffs' legal conclusion to which no response is required. With respect to the second sentence of paragraph five, defendant is without knowledge or information sufficient to form a belief as to the allegations.

THE COAL ACT

6. Paragraph six contains plaintiffs' legal conclusions to which no response is required. To the extent plaintiffs refer to the text of the Coal Industry Retiree Health Benefit Act of 1992 ("The Coal Act"), the statute speaks for itself.

7. Paragraph seven contains plaintiffs' legal conclusions to which no response is required. To the extent plaintiffs refer to the text of the Coal Act, the statute speaks for itself.

8. Paragraph eight contains plaintiffs' legal conclusions to which no response is required. To the extent plaintiffs refer to the text of the Coal Act, the statute speaks for itself.

9. Paragraph nine contains plaintiffs' legal conclusions to which no response is required. To the extent plaintiffs refer to the text of the Coal Act, the statute speaks for itself.

10. Paragraph ten contains plaintiffs' legal conclusions to which no response is required.

11. Paragraph eleven contains plaintiffs' legal conclusions to which no response is required. To the extent plaintiffs refer to the text of the Coal Act, the statute speaks for itself.

12. Paragraph twelve contains plaintiffs' legal conclusions to which no response is required. To the extent plaintiffs refer to the text of the Coal Act, the statute speaks for itself.

13. Paragraph thirteen contains plaintiffs' legal conclusions to which no response is required. To the extent plaintiffs refer to the text of the Coal Act, the statute speaks for itself.

14. Paragraph fourteen contains plaintiffs' legal conclusions to which no response is required. To the extent plaintiffs refer to the text of the Coal Act, the statute speaks for itself.

EASTERN ENTERPRISES V. APFEL

15. Paragraph fifteen contains plaintiffs' legal conclusions to which no response is required. To the extent plaintiffs refer to the Supreme Court's decision

in *Eastern Enterprises v. Apfel*, 118 S. Ct. 2131 (1998), the Supreme Court's decisions speaks for itself.

16. Paragraph sixteen contains plaintiffs' legal conclusions to which no response is required. To the extent plaintiffs refer to the Supreme Court's decision in *Eastern Enterprises v. Apfel*, 118 S. Ct. 2131 (1998), the Supreme Court's decision speaks for itself.

17. Defendant admits that he voided assignments of beneficiaries to assignees who were similarly situated to Eastern Enterprises. Defendant otherwise denies the allegations in this paragraph.

COUNT IV
(Peabody Coal and EACC)
Request for Declaratory Judgment Invalidating Beneficiary Assignments Made to Peabody Coal and EACC after Septebmer 30, 1993

32. *See* Defendant's Answer ¶¶ 1-17 *supra*.

33. Paragraph thirty three contains plaintiffs' legal conclusions to which no response is required. To the extent plaintiffs refer to the text of the Coal Act, the statute speaks for itself.

34. Paragraph thirty four contains plaintiffs' legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations in this paragraph.

35. Paragraph thirty five contains plaintiffs' legal conclusions to which no response is required. To the extent plaintiffs refer to the text of the Coal Act, the statute speaks for itself.

36. Paragraph thirty six contains plaintiffs' legal conclusions to which no response is required. To the

extent a response is required, defendant denies the allegations in this paragraph.

37. Paragraph thirty seven contains plaintiffs' legal conclusions to which no response is required. To the extent that plaintiffs refer to the decision in *Dixie Fuel Co. v. Apfel*, 171 F.3d 1052 (6th Cir. 1999), the opinion speaks for itself.

38. Defendant admits that some initial assignments were made to plaintiffs after September 30, 1993. Defendant otherwise denies the allegations in this paragraph.

39. Defendant admits that he has not applied the *Dixie Fuel* decision to plaintiffs. Defendant otherwise denies the allegations in this paragraph.

40. Paragraph forty contains plaintiffs' legal conclusions to which no response is required. To the extent plaintiffs refer to the text of the Coal Act, the statute speaks for itself.

COUNT V
(Peabody Coal and EACC)
Request for Injunctive Relief Barring Future Assignments from the Unassigned Pool

41. *See* Defendant's Answer ¶¶ 1-17, 32-40 *supra*.

42. Paragraph forty two contains plaintiffs' legal conclusions to which no response is required.

43. Defendant denies the allegations in this paragraph.

44. Paragraph forty four contains plaintiffs' legal conclusions to which no response is required.

COUNT VI
(Peabody Coal and EACC)
Declaration Invalidating the Coal Act Assignments of George Weaver, Bude Jarvis, William Barnett, Jewell Patterson, Jack Callor, Jarrett Shrewsbury, Michael Restic and Lovell Kelly

45. *See* Defendant's Answer ¶¶ 1-17, 32-44 *supra*.

46. Paragraph forty six contains plaintiffs' legal conclusions to which no response is required. To the extent plaintiffs refer to the text of the Coal Act, the statute speaks for itself.

47. Defendant admits the allegations in the first sentence of paragraph forty seven. Defendant denies the allegations in the second sentence of paragraph forty seven.

48. Defendant admits that by letter decisions he refused to withdraw the assignments of George Weaver and Bude Jarvis to EACC and William Barnett to Peabody. The letters speak for themselves. Otherwise, defendant denies the allegations in this paragraph.

49. Defendant admits the allegations in the first sentence of paragraph forty nine. Defendant denies the allegations in the second sentence of paragraph forty nine.

50. Defendant admits that by letter decisions he refused to withdraw the assignments of Jarrett Shrewsbury to EACC and Jack Callor to Peabody. The letters speak for themselves. Otherwise, defendant denies the allegations in this paragraph.

51. Paragraph fifty one contains plaintiffs' legal conclusions to which no response is required. To the ex-

tent a response is required, defendant denies the allegations in this paragraph.

52. Paragraph fifty two contains plaintiffs' legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations in this paragraph.

53. Defendant denies the allegations contained in this paragraph.

54. Defendant admits that by letter decision he refused to withdraw the assignments of Michael Restic and Virgil Kelley to EACC. The letter speaks for itself. Defendant otherwise denies the allegations in this paragraph.

55. Paragraph fifty five contains plaintiffs' legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations in this paragraph.

56. Paragraph fifty six contains plaintiffs' legal conclusions to which no response is required.

The rest of the Complaint contains Plaintiffs' Prayer for Relief, to which no response is required. If a response is required, Defendant denies that Plaintiffs are entitled to the relief requested.

Defendant denies each and every allegation not heretofore expressly admitted, qualified, or denied by this Answer.

WHEREFORE, Defendant respectfully requests that this action be dismissed with prejudice.

Respectfully submitted,

DAVID W. OGDEN
Acting Assistant Attorney General

STEVE REED
United States Attorney

JOHN E. KUHN, JR.
Assistant United States Attorney

/s/ BENJAMIN P. COOPER
RICHARD LEPLEY
BENJAMIN P. COOPER
Attorneys
United States Department of Justice
Civil Division
P.O. Box 883, Room 946
Washington, D.C. 20044
Telephone: (202) 514-1285

Attorneys for Defendant

Dated: February 29, 2000

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF OHIO (COLUMBUS)

No. 99-CV-532

BELLAIRE CORPORATION, ET AL., PLAINTIFF

v.

APFEL, ET AL., DEFENDANT

RELEVANT DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
6/4/99	1	COMPLAINT (referred to Mag Judge Norah M King) (no. pgs: 27 + exhibits A through NNN) (wh) [Entry date 06/10/99]
11/8/99	8	MOTION by UMWA Combined Bene to intervene (no pgs: 11 + exhibits) (wh) [Entry date 11/09/99]
11/29/99	10	MEMO IN OPPO by plaintiff to motion to intervene [8-1] (no pgs: 14) (wh) [Entry date 11/30/99]

DATE	DOCKET NUMBER	PROCEEDINGS
11/30/99	11	ANSWER by defendant (no pgs: 23) (wh) [Entry date 12/02/99]
12/13/99	12	REPLY by UMWA Benefit Plan, UMWA Combined Bene, Bellaire Corporation to response to motion to intervene [8-1] (no pgs: 8) (wh) [Entry date 12/15/99]
4/5/00	14	MOTION by plaintiffs for preliminary injunction, for permanent injunction, for partial summary judgment, and for judgment (no pgs: 14 + exh) (pl) [Entry date 04/06/00]
4/7/00	15	OPINION AND ORDER: by Senior Judge Joseph P. Kinneary granting motion to intervene [8-1] Trustees of UMWA (cc: all counsel) (no pgs: 8) (pl) [Entry date 04/07/00]
4/7/00	16	ANSWER by intervenor-defendant Trustees of UMWA (no pgs: 3) (pl) [Entry date 04/07/00]

DATE	DOCKET NUMBER	PROCEEDINGS
5/1/00	17	RESPONSE by defendant Kenneth S Apfel to motion for preliminary injunction [14-1], motion for partial summary judgment [14-3], motion for judgment [14-4] (no pgs: 19 + exh) (pl) [Entry date 05/02/00]
5/9/00	18	MOTION by plaintiff Bellaire Corporation, plaintiff NACCO Industries Inc for preliminary injunction, for permanent injunction, for partial summary judgment and final judgment against intervenor dft Trustees of the UMWA combined benefit fund (no pgs: 5) (sm) [Entry date 05/10/00]
5/12/00	19	REPLY by plaintiff Bellaire Corporation, plaintiff NACCO Industries Inc, plaintiff North American Coal to response to motion for preliminary injunction [14-1], motion for permanent injunction [14-2], motion for partial summary judgment [14-3], motion for judgment [14-4] (no pgs: 10) (pl) [Entry date 05/15/00]

DATE	DOCKET NUMBER	PROCEEDINGS
6/2/00	20	RESPONSE by intervenor-defendant Trustees of UMWA to motion for preliminary injunction [18-1], motion for permanent injunction [18-2], motion for partial summary judgment and final judgment [18-3] (no pgs: 14 + exh) (pl) [Entry date 06/05/00]
6/16/00	21	REPLY by plaintiff to response to motion for preliminary injunction [18-1], motion for permanent injunction [18-2], motion for partial summary judgment and final judgment [18-3] (no pgs: 7) (gk) [Entry date 06/19/00]
6/30/00	31	OPINION AND ORDER: by Senior Judge Joseph P. Kinneary granting motion for preliminary injunction [18-1], granting motion for permanent injunction [18-2], granting motion for partial summary judgment and final judgment [18-3], granting motion for preliminary injunction [14-1], granting motion for permanent

DATE	DOCKET NUMBER	PROCEEDINGS
		injunction [14-2], granting motion for partial summary judgment [14-3], granting motion for judgment [14-4] as to Count IV; Clerk to enter Final Judgment as to Count IV of the Complaint (cc: all counsel) (no pgs: 14) (pl) [Entry date 06/30/00] [Edit date 06/30/00]
6/30/00	32	JUDGMENT: entered granting partial summary judgment and injunction as to Count IV of the Complaint in favor of the Bellaire Groups (cc: all counsel) (no pgs: 1) (pl) [Entry date 06/30/00] [Edit date 06/30/00]
8/25/00	37	NOTICE OF APPEAL by defendant Kenneth S Apfel from Dist. Court decision [32-1] of 06/30/00 (no pgs: 3) (slh) [Entry date 08/28/00]
8/25/00	38	NOTICE OF APPEAL by intervenor-defendant Trustees of UMWA from Dist. Court decision [32-1] of 06/30/00 (no pgs: 3) (slh) [Entry date 08/28/00]

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 00-4082

BELLAIRE CORPORATION; NACCO INDUSTRIES, INC.; NORTH AMERICAN COAL CORPORATION, PLAINTIFFS-APPELLEES

v.

KENNETH S. APFEL, COMMISSIONER OF SOCIAL SECURITY; DEFENDANT

MICHAEL H. HOLLAND; WILLIAM P. HOBGOOD; MARTY D. HUDSON; THOMAS O.S. RAND; ELLIOT A. SEGAL; CARL E. VAN HORN; GAIL R. WILENSKY, AS THE TRUSTEES OF THE UMWA COMBINED BENEFIT FUND INTERVENING DEFENDANTS-APPELLANTS

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
8/30/00	Civil Case Docketed. Notice filed by Appellant Michael H. Holland, Appellant William P. Hobgood, Appellant Marty D. Hudson, Appellant Thomas O.S. Rand, Appellant Elliot A. Segal, Appellant Carl E. Van Horn, Appellant Gail R. Wilensky. Transcript needed: n ❑ (cf)
10/24/00	PETITION for en banc hearing filed by Jeffrey Clair for Appellant Kenneth S. Apfel. Certificate of service date 10/5/00. [00-4080, 00-4082] (blh)

DATE	PROCEEDINGS
11/3/00	PETITION for en banc hearing filed by Peter Buscemi for Appellants Gail R. Wilensky, Carl E. Van Horn, Elliot A. Segal, Thomas O.S. Rand, Marty D. Hudson, William P. Hobgood, Michael H. Holland. Certificate of service date 11/1/00. [00-4080, 00-4082] (blh)
12/6/00	ORDER filed denying petition for en banc hearing [2250528-1] filed by Peter Buscemi and petition for en banc hearing [2243349-1] filed by Jeffrey Clair [00-4080, 00-4082]. Entered by order of the court. (blh)
2/16/01	PROOF BRIEF filed by John R. Mooney for Appellant Gail R. Wilensky, Appellant Carl E. Van Horn, Appellant Elliot A. Segal, Appellant Thomas O.S. Rand, Appellant Marty D. Hudson, Appellant William P. Hobgood, Appellant Michael H. Holland, Peter Buscemi for Appellant Gail R. Wilensky, Appellant Carl E. Van Horn, Appellant Elliot A. Segal, Appellant Thomas O.S. Rand, Appellant Marty D. Hudson, Appellant William P. Hobgood, Appellant Michael H. Holland. Certificate of service date 2/12/01. Number of Pages: 46. [00-4082] ❑ (vf)

DATE	PROCEEDINGS
3/6/01	PROOF BRIEF filed by Brian G. Selden and Jeffrey S. Sutton for Appellee N Amer Coal Corp, Appellee Nacco Indust, Appellee Bellaire Corp. Certificate of service date 3/5/01. Number of Pages: 33. [00-4080, 00-4082] _ (vf)
3/14/01	REPLY BRIEF filed by John R. Mooney for Appellant Gail R. Wilensky, Appellant Carl E. Van Horn, Appellant Elliot A. Segal, Appellant Thomas O.S. Rand, Appellant Marty D. Hudson, Appellant William P. Hobgood, Appellant Michael H. Holland, Peter Buscemi for Appellant Gail R. Wilensky, Appellant Carl E. Van Horn, Appellant Elliot A. Segal, Appellant Thomas O.S. Rand, Appellant Marty D. Hudson, Appellant William P. Hobgood, Appellant Michael H. Holland. Copies: 7. Certificate of service date 3/12/01. [00-4082] (vf)
4/12/01	CAUSE SUBMITTED on briefs to panel consisting of Judges Martin, Norris, Quist sitting on 6/13/01. [00-4080, 00-4082] (srw)
6/22/01	Per Curiam OPINION filed: AFFIRMED [00-4080, 00-4082], decision not for publication pursuant to local rule 28(g) [00-4080, 00-4082]. Boyce F. Martin, Jr., Chief Judge, Alan E. Norris, Circuit Judge, Gordon J. Quist, District Judge. (cf)

DATE	PROCEEDINGS
11/28/01	U.S. Supreme Court notice filed regarding petition for writ of certiorari, filed by William A. Halter, Comm. SS in the Supreme Court on 11//19/01, Supreme Ct. case number: 01-705. [00-4082] (swh)
1/24/02	MANDATE ISSUED with no cost taxed [00-4082] (dac)
1/30/02	U.S. Supreme Court letter filed denying [*sic*] petition for writ of certiorari [2462687-1] filed by William A. Halter [00-4082]. Filed in the Supreme Court on 01-20-02. (swh)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

Civil Action No. C2-99 532
JUDGE KINNEARY
MAGISTRATE JUDGE KING

BELLAIRE CORPORATION, NACCO INDUSTRIES, INC. AND THE NORTH AMERICAN COAL CORPORATION,
PLAINTIFFS

v.

KENNETH S. APFEL, COMMISSIONER OF SOCIAL SECURITY, DEFENDANT

[Filed: Jun 4, 1999]

COMPLAINT

Plaintiffs, Bellaire Corporation ("Bellaire"), NACCO Industries, Inc. ("NACCO") and The North American Coal Corporation ("North American") through their undersigned counsel, hereby file the following Complaint against the Defendant, Kenneth S. Apfel, Commissioner of Social Security ("Commissioner"):

INTRODUCTION

1. This case involves several different challenges to the Commissioner's actions under the Coal Industry Retiree Health Benefit Act of 1992 ("Coal Act"), 26 U.S.C. Section 9701 *et seq.* The Commissioner has made the majority of the contested assignments to Bellaire under EIN 34-0431290 and a lesser number to each of NACCO under EIN 34-1505819 and North American under EIN 34-1554846. Of the three, only

Bellaire is a signatory operator as defined in the Coal Act. NACCO and North American are merely related persons, within the meaning of the Coal Act, to Bellaire. Neither NACCO or North American ever employed any miner assignable under the Coal Act. Bellaire has prepared and filed all the administrative appeals referenced herein, regardless of which company received the assignment from the Commissioner. Hereafter all three companies are referred to as the Bellaire Group, unless specific reference is made to one of the individual companies.

2. Counts I and II of the Complaint concern the Commissioner's wrongful assignment of miners (and their dependents) to the Bellaire Group under Sections 9706(a) of the Coal Act, that never worked for or had any relationship with the Bellaire Group and, instead, worked for Independent Coal & Coke Company ("ICC") or Cambria Mining Company ("Cambria"). These assignments were arbitrary, capricious, an abuse of discretion, not in accordance with law, unwarranted by the facts, unsupported by the evidence, plainly erroneous, and contained errors apparent from the face of the Social Security Administration's ("SSA") own records and/or from other information available to SSA because, among other things, the basis on which the Commissioner assigned the miners (and their dependents) to the Bellaire Group—that it was ICC's and Cambria's successor—is not a permissible basis for assigning miners and dependents under Section 9706(a) of the Coal Act as a matter of law.

3. Count III of the Complaint concerns the Commissioner's wrongful failure to void the assignment of the ICC and Cambria miners (and their dependents) to the Bellaire Group based on the Supreme Court's

decision in *Eastern Enterprises v. Apfel*, 118 S. Ct. 2131 (1998). In *Eastern*, the Supreme Court ruled that the assignment of miners to an operator that last signed a Coal Wage Agreement in 1964 was unconstitutional. Based on *Eastern*, the Commissioner subsequently voided several thousand assignments to 124 operators that last signed Coal Wage Agreements before 1974. Here, ICC last signed a Coal Wage Agreement in 1966 and Cambria last signed a Coal Wage Agreement in 1954. Therefore, ICC and Cambria are materially indistinguishable from Eastern Enterprises in regards to the Coal Act and, had the ICC and Cambria miners (and their dependents) been assigned directly to these companies, the Commissioner would have voided them based on *Eastern*. As a result, the assignments to the Bellaire Group of ICC and Cambria miners (and their dependents) equally should have been voided based on *Eastern*, and the Commissioner's refusal to do so was arbitrary, capricious, an abuse of discretion, not in accordance with law, unwarranted by the facts, unsupported by the evidence, and plainly erroneous.

4. Count IV of the Complaint concerns the Commissioner's unlawful making of original assignments to the Bellaire Group after September 30, 1993. The Coal Act authorizes the Commissioner to make original assignments only "before October 1, 1993." 26 U.S.C. § 9706(a). After September 30, 1993, the Commissioner's making of any additional original assignments to the Bellaire Group was arbitrary, capricious, an abuse of discretion, not in accordance with law and plainly erroneous, because it was contrary to the express language of the Coal Act.

5. Count V of the Complaint concerns the Commissioner's wrongful refusal to revoke various indivi-

dual assignments of miners (and their dependents) to the Bellaire Group. The assignments which are the subject of each of this Count were erroneous for the reasons set forth in the Bellaire Group's administrative appeals, which the Commissioner wrongly denied. These assignments and the Commissioner's refusal to revoke each of them, therefore, were arbitrary, capricious, an abuse of discretion, not in accordance with law, unwarranted by the facts, unsupported by the evidence, and plainly erroneous.

6. Count VI of the Complaint concerns the Commissioner's unlawful reassignment of miners and dependents among members of the Bellaire group. The liability of Bellaire and other members of the Bellaire Group, including North American and NACCO, is joint and several under the Coal Act, but is exclusively premised upon prior employment relationships which only Bellaire ever had with any retired miners or asset acquisitions to which only Bellaire was a party. Therefore, no member of the Bellaire Group can have any basis of liability different than Bellaire itself has; either all members are equally liable or no member is liable. Thus, whenever an assignment of a miner and/or his dependent is revoked by the Commissioner as to any member of the Bellaire Group, whether Bellaire itself, North American or NACCO, that final decision precludes reassignment of the same miner and/or dependents to another member of the Bellaire Group. Such reassignments constitute "double jeopardy" and undermine the finality of administrative decisions previously rendered by the Commissioner. Therefore, all such reassignments within the Bellaire Group are arbitrary, capricious, an abuse of discretion, not in accordance with law, unwarranted by the facts, unsupported by the

evidence, plainly erroneous and invalid as a matter of law.

PARTIES

7. Plaintiff Bellaire is a corporation organized under the laws of the state of Ohio with its principal place of business located at Signature Place II, 14785 Preston Road, Suite 1100, Dallas, Texas 75240-7891, but maintains an office at 155 Highway 7, Powhatan Point, Ohio 43942. Bellaire formerly operated bituminous coal mines and associated facilities located in Belmont County, Ohio, and in other locations.

8. Plaintiff NACCO is a corporation organized under the laws of the state of Delaware, with its principal place of business located at 5875 Landerbrook, Suite 300, Mayfield Heights, Ohio 44124. NACCO is the parent corporation of Bellaire.

9. Plaintiff North American is a corporation organized under the laws of the state of Delaware, with its principal place of business located at Signature Place II, 14785 Preston Road, Suite 1100, Dallas, Texas 75240-7891, but maintains an office at 155 Highway 7, Powhatan Point, Ohio 43942. North American is a subsidiary of NACCO.

10. Defendant Kenneth S. Apfel is the Commissioner of Social Security. The Commissioner maintains his principal office at Room 900, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. The Commissioner is responsible for the oversight of the SSA.

JURISDICTION AND VENUE

11. Jurisdiction over this action arises under 28 U.S.C. Sections 1331, 1346, and 1361, as well as 5 U.S.C. Section 702.

12. Venue lies in this District under 28 U.S.C. § 1391.

THE ASSIGNMENT PROCESS UNDER THE COAL ACT

13. Section 9706(a) of the Coal Act, 26 U.S.C. Section 9706(a), requires the Commissioner to assign certain retired coal miners and their dependents to "signatory operators" who "remain in business," and if the signatory operator" is no longer "in business," to that signatory operator's "related persons." Thereafter, pursuant to Section 9704(a) of the Coal Act, 26 U.S.C. Section 9704(a), the United Mine Workers of America Combined Benefit Fund charges that signatory operator (or related person) a specified annual premium for each assigned beneficiary.

14. The formula the Commissioner uses to assign miners under Section 9706(a) of the Coal Act, 26 U.S.C. Section 9706(a), provides as follows:

> (a) In general. For purposes of this chapter, the Commissioner of Social Security shall, before October 1, 1993, assign each coal industry retiree who is an eligible beneficiary to a signatory operator which (or any related person with respect to which) remains in business in the following order:
>
> (1) First, to the signatory operator which—

> (A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and
>
> (B) was the most recent signatory operator to employ the coal industry retiree in the coal industry for at least 2 years.
>
> (2) Second, if the retiree is not assigned under paragraph (1), to the signatory operator which—
>
> (A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and
>
> (B) was the most recent signatory operator to employ the coal industry retiree in the coal industry.
>
> (3) Third, if the retiree is not assigned under paragraph (1) or (2), to the signatory operator which employed the coal industry retiree in the coal industry for a longer period of time than any other signatory operator prior to the effective date of the 1978 coal wage agreement.
>
> (b) Rules relating to employment and reassignment upon purchase.
>
> For purposes of subsection (a)—
>
> (1) Aggregation rules.
>
> (A) Related person. Any employment of a coal industry retiree in the coal industry by a

signatory operator shall be treated as employment by any related persons to such operator.

(B) Certain employment disregarded. Employment with—(i) a person which is (and all related person with respect to which are) no longer in business. . . .

15. For purposes of Section 9706 of the Coal Act, the term "signatory operator" is defined in Section 9701(c)(1) of the Coal Act, 26 U.S.C. Section 9701(c)(1), to mean "a person which is or was a signatory to a coal wage agreement." Additionally, the term "in business" is defined in Section 9701(c)(7) of the Coal Act, 26 U.S.C. Section 9701(c)(7), to mean that "a person shall be considered to be in business if such person conducts or derives revenue from any business activity, whether or not in the coal industry."

16. For purposes of Section 9706 of the Coal Act, the term "coal wage agreement" is defined, by Section 9701(b)(1) of the Coal Act, 26 U.S.C. Section 9701(b)(1), to mean either (a) the National Bituminous Coal Wage Agreement, or (b) any other agreement entered into between an employer in the coal industry and the United States Mine Workers of America that required or requires one or both of the following:

(i) the provision of health benefits to retirees of such employer, eligibility for which is based on years of service credited under a plan established by the settlors and described in Section 404(c) or a continuation of such plan; or

(ii) contributions to the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, or any predecessor thereof.

17. For purposes of Section 9706 of the Coal Act, 26 U.S.C. Section 9706, the term "related person" is defined by Section 9701(c)(2), 26 U.S.C. Section 9701(c)(2), as including:

(A) In General. A person shall be considered to be a related person to a signatory operator if that person is—

(i) a member of the controlled group of corporations (within the meaning of Section 52(a)) which includes the signatory operator;

(ii) a trade or business which is under common control with such signatory operator (as determined under Section 52(b));

(iii) any other person who is identified as having a partnership interest or joint venture with a signatory operator in a business within the coal industry, but only if such business employed eligible beneficiaries, except that this clause shall not apply to a person whose only interest is as a limited partner.

A related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii).

(B) Time for determination. The relationships described in clauses (i), (ii), and (iii) of subparagraph (A) shall be determined as of July 20, 1992, except that if, on July 20, 1992, a signatory operator is no longer in business, the relationships shall be determined as of the time immediately before such operator ceased to be in business.

COUNT I

18. The Bellaire Group hereby incorporates the averments set forth in paragraphs 1 through 17, above.

19. The Commissioner has issued Internal Guidelines for handling assignments under the Coal Act. In these Guidelines the Commissioner has concluded that, among other things, if the signatory operator that employed a miner and its related persons is no longer in business, then the miner (and his dependents) can be assigned to the signatory operator's successor(s) under Section 9706(a) of the Coal Act. The Commissioner reasons that, in these circumstances, the successor is one of the signatory operator's "related persons" under Section 9702(c)(2) of the Coal Act.

20. The Commissioner has assigned numerous ICC miners (and their dependents) to the Bellaire Group on the basis that it is a successor to ICC. The Bellaire Group administratively appealed each such assignment, most of which the Commissioner refused to revoke in a series of final decisions. The specific ICC miners and dependents, the date of the Bellaire Group appeals and the date of the Commissioner's final negative administrative decisions are set forth in a chart attached hereto and incorporated herein as Exhibit A.

21. The Commissioner assigned the ICC miners and their dependents to the Bellaire Group because (a) he determined that the signatory operator that had employed the miners under a Coal Wage Agreement—ICC—would have received the assignments, but it was no longer in business, (b) none of ICC's "related persons" were still in business, and (c) the Bellaire Group was ICC's successor with respect to these miners because, in 1968, a member of the Bellaire Group acquired

the coal mining assets which ICC formerly had owned and operated.

22. The Bellaire Group never shared any common ownership with ICC, nor were they partners of any sort. Therefore, the Bellaire Group was never a "related person" to ICC under Section 9702(c)(2) of the Coal Act.

23. The Bellaire Group's sole contact with ICC was that in 1968 a member of the Group purchased the coal mining assets that ICC had owned and operated. A copy of the acquisition documents was provided to the Commissioner in support of the Bellaire Group's appeal of the assignments to it of each of the ICC miners referenced on Exhibit A. A copy of the acquisition documents is attached hereto as Exhibit A-1.

24. Regulations issued at 20 C.F.R. Section 422.604, provide that once the Commissioner notifies an operator that it has been assigned miners, the operator may, within thirty (30) days, request additional information concerning the work histories of the miners and the basis for the assignments.

25. The Bellaire Group timely requested information concerning each of the ICC miners referenced on Exhibit A.

26. The Bellaire Group appealed the assignments to it of each of the ICC miners referenced on Exhibit A. Each such appeal was timely made, including the appeal relating to ICC miner Martin A. Vuksinick, SSN [redacted], who the Bellaire Group reasonably believed to be deceased and therefore did not initially appeal. Upon learning that Mr. Vuksinick was not deceased, the Bellaire Group promptly and timely, measured from

the date it gained such knowledge, administratively appealed as to Mr. Vuksinick as well.

27. By several letters dated June 6, 1994; November 28, 1994; April 3, 1996; August 15, 1996; August 16, 1996; September 11, 1996; June 27, 1997; July 8, 1998; and August 13, 1998, the Bellaire Group provided information in support of its requests for review of the ICC miner assignments. In each such letter, the Bellaire Group showed that the assignments of ICC miners appealed in the particular letter were improper because the Coal Act did not permit the Commissioner to assign miners to successors, such as the Bellaire Group, as a matter of law. Copies of the appeal letters relating to the ICC miners referred to on Exhibit A are attached hereto as Exhibits D, E, F, H, J, L, N, O, Q, S, U, W and MMM.

28. By several letters dated June 28, 1995; July 10, 1995; March 27, 1997; June 19, 1997; November 25, 1997; February 12, 1998; February 20, 1998; July 17, 1998; September 1, 1998; and April 19, 1999, the Commissioner issued final decisions in which he notified the Bellaire Group that he would not revoke the assignment of any of the ICC miners referred to on Exhibit A. Copies of the final decisions relating to the ICC miners are attached as Exhibits G, I, K, M, P, R, T, V, X and NNN.

29. The Commissioner's final decisions that are referenced in the foregoing paragraph were arbitrary, capricious, an abuse of discretion, not in accordance with law, unwarranted by the facts, unsupported by the evidence, plainly erroneous, and contained errors apparent from the face of the Commissioner's own records and/or from other information available to the

Commissioner for reasons including, but not limited to, the following:

(a) The Commissioner cannot, as a matter of law, assign miners to successors under Section 9706(a) of the Coal Act; and

(b) The Bellaire Group's inadvertent delay in appealing the assignment of the ICC miner Martin A. Vuksinick, SSN [redacted], to the Bellaire Group was harmless error and, therefore, is not a legitimate basis upon which the Commissioner can refuse to review the assignment, particularly given the extent to which the Commissioner routinely gives extensions and his own delays in processing requests for information and review.

30. The Commissioner's improper assignments of the ICC miners (and their dependents) to the Bellaire Group, and his improper failure to review (in one case) and revoke (in all cases) the same, has caused the Bellaire Group to incur premium obligations and other expenses and harm that it would not have incurred if the Commissioner has properly performed his duties under Section 9706 of the Coal Act.

COUNT II

31. The Bellaire Group hereby incorporates the averments set forth in paragraphs 1 through 30, above.

32. The Commissioner has issued Internal Guidelines for handling assignments under the Coal Act. In these Guidelines, the Commissioner has concluded that, among other things, if the signatory operator that employed a miner and its related persons is no longer in business, then the miner (and his dependents) can be

assigned to the signatory operator's successor(s) under Section 9706(a) of the Coal Act. The Commissioner reasons that, in these circumstances, the successor is one of the signatory operator's "related persons" under Section 9702(c)(2) of the Coal Act.

33. The Commissioner has assigned numerous Cambria miners (and their dependents) to the Bellaire Group on the basis that it is a successor to Cambria. The Bellaire Group administratively appealed each such assignment, all of which the Commissioner refused to revoke in a series of final decisions. The specific Cambria miners and dependents, the date of the Bellaire Group's appeals and the date of the Commissioner's final negative administrative decisions are set forth in a chart attached hereto and incorporated herein as Exhibit B.

34. The Commissioner assigned the Cambria miners and their dependents to the Bellaire Group because (a) he determined that the signatory operator that had employed the miners under a Coal Wage Agreement—Cambria—would have received the assignments, but it was no longer in business, (b) none of Cambria's "related persons" were still in business, and (c) the Bellaire Group was Cambria's successor with respect to these miners because, in 1954, a member of the Bellaire Group acquired the coal mining assets which Cambria formerly had owned and operated.

35. The Bellaire Group never shared any common ownership with Cambria, nor were they partners of any sort. Therefore, the Bellaire Group was never a "related person" to Cambria under Section 9702(c)(2) of the Coal Act.

36. The Bellaire Group's sole contact with Cambria was that in 1954 a member of the Group purchased the coal mining assets that Cambria had owned and operated. A copy of the acquisition document was provided to the Commissioner in support of the Bellaire Group's appeal of the assignment to it of each of the Cambria miners referenced on Exhibit B. A copy of the acquisition document is attached hereto as Exhibit B-1.

37. Regulations issued at 20 C.F.R. Section 422.604, provide that once the Commissioner notifies an operator that it has been assigned miners, the operator may, within thirty (30) days, request additional information concerning the work histories of the miners and the basis for the assignments.

38. The Bellaire Group timely requested information concerning each of the Cambria miners referenced on Exhibit B.

39. The Bellaire Group appealed the assignments to it of each of the Cambria miners referenced on Exhibit B. Each such appeal was timely made.

40. By several letters dated June 6, 1994; November 21, 1994; November 28, 1994; August 15, 1996; August 16, 1996; and June 27, 1997, the Bellaire Group provided information in support of its request for review of the Cambria miner assignments. In each such letter, the Bellaire Group showed that the assignments of Cambria miners appealed in the particular letter were improper because the Coal Act did not permit the Commissioner to assign miners to successors, such as the Bellaire Group, as a matter of law. Copies of the appeal letters relating to the Cambria miners referred to on Exhibit B are attached as Exhibits D, H, J, N, U, W, Y and DD.

41. By several letters dated June 28, 1995; July 10, 1995; August 19, 1996; March 27, 1997; May 14, 1997; November 25, 1997; February 12, 1998; April 1, 1998 and September 1, 1998, the Commissioner issued final decisions in which he notified the Bellaire Group that he would not revoke the assignment of any of the Cambria miners referred to herein. Copies of the final decisions relating to the Cambria miners referred to on Exhibit B are attached hereto as Exhibits G, I, K, P, V, X, Z and EE.

42. The Commissioner's final decisions that are referenced in the foregoing paragraph were arbitrary, capricious, an abuse of discretion, not in accordance with law, unwarranted by the facts, unsupported by the evidence, plainly erroneous, and contained errors apparent from the face of the Commissioner's own records and/or from other information available to the Commissioner for reasons including, but not limited to, the following:

(a) The Commissioner cannot, as a matter of law, assign miners to successors under Section 9706(a) of the Coal Act.

43. The Commissioner's improper assignments of the Cambria miners (and their dependents) to the Bellaire Group, and his improper failure to revoke the same, has caused the Bellaire Group to incur premium obligations and other expenses and harm that it would not have incurred if the Commissioner has properly performed his duties under Section 9706 of the Coal Act.

COUNT III

44. The Bellaire Group hereby incorporates the averments of paragraphs 1 through 43, above.

45. In *Eastern Enterprises v. Apfel*, 118 S. Ct. 2131 (1998), the Supreme Court held that the Coal Act was unconstitutional as applied to a signatory operator that last signed the National Bituminous Coal Wage Agreement of 1964.

46. Following the Supreme Court's decision in *Eastern*, the Commissioner voided assignments to at least 124 signatory operators on the basis that the assignments were unconstitutional because, like Eastern Enterprises, those operators had last signed Coal Wage Agreements before 1974. Upon information and belief, a number of the 124 companies so relieved had not requested relief pursuant to *Eastern*.

47. ICC last signed the National Bituminous Coal Wage Agreement of 1966.

48. Cambria last signed the National Bituminous Coal Wage Agreement of 1950.

49. In several instances, the Commissioner has taken the position that assignments under Section 9706(a) of the Coal Act are based on the signatory status of the company that employed the miner, not the signatory status of any allegedly related company.

50. If ICC was still in business when the assignments at issue here were made, then the assignments referred to on Exhibit A would have been made directly to ICC and the Commissioner would have voided them under the Commissioner's application of *Eastern*.

51. If Cambria was still in business when the assignments at issue here were made, then the assignments referred to on Exhibit B would have been made directly to Cambria and the Commissioner would have voided them under the Commissioner's application of *Eastern*.

52. Nonetheless, the Commissioner did not void the assignments of the ICC and Cambria miners (and their dependents) to the Bellaire Group.

53. The Commissioner's disparate treatment of the Bellaire Group in failing to void the ICC and Cambria assignments to the Bellaire Group while he sua sponte applied *Eastern* to others was arbitrary, capricious, an abuse of discretion, not in accordance with law, unwarranted by the facts, unsupported by the evidence, plainly erroneous, and contained errors apparent from the face of the Commissioner's own records and/or from other information available to the Commissioner for reasons including, but not limited to:

(a) ICC and Cambria are materially indistinguishable from Eastern Enterprises and, as a result, there is no legitimate basis for not voiding the assignments of the ICC and Cambria miners; and

(b) The Commissioner's decision to ignore the signatory status of related persons for assignment purposes necessarily means that the Bellaire Group's signatory status is equally irrelevant to the constitutionality of the assignments of the ICC and Cambria miners (and dependents), *i.e.*, only ICC's and Cambria's signatory status is material to that analysis, and that status required the Commissioner to include these assignments with those he voided based on the decision in *Eastern*.

54. The Commissioner's improper refusal to void the assignments to the Bellaire Group of the ICC and Cambria miners (and their dependents) has caused the Bellaire Group to incur attorney's fees, costs, premium obligations and other expenses and harm that it would not have incurred if the Commissioner had properly performed his duties under Section 9706 of the Coal Act.

COUNT IV

55. The Bellaire Group hereby incorporates the averments of paragraphs 1 through 54, above.

56. The Coal Act requires the Commissioner to have completed the original assignment process "before October 1, 1993." 26 U.S.C. § 9706(a).

57. The Coal Act does not authorize the Commissioner to make any original assignments after September 30, 1993.

58. The Coal Act does authorize the Commissioner to reassign after September 30, 1993 miners and their dependents who originally were assigned to a signatory operator before October 1, 1993, but who were the subject of a successful administrative appeal by the originally assigned signatory operator.

59. Upon information and belief, the Commissioner did not make any reassignments until an unknown date in 1995, at the earliest.

60. The Bellaire Group avers on the basis of information and belief that the Commissioner made original assignments to the Bellaire Group after September 30, 1993 and in violation of the Coal Act's express terms on a number of occasions. The specific miners and dependents presently believed to have been the subject

of original assignments after September 30, 1993 and the dates of their respective assignments to the Bellaire Group are set forth in a chart attached hereto and incorporated herein as Exhibit C. The Commissioner's presently known unlawful original assignments to the Bellaire Group referred to in this paragraph were made in several letters dated after September 30, 1993. Copies of these assignment letters referred to on Exhibit C are attached hereto as Exhibits PP through YY.

61. In addition to the miners and dependents referenced in paragraph 60 above, the Bellaire Group believes that the Commissioner may have made other original assignments to it in 1995 and later, but cannot presently identify those additional unlawful assignments because the Commissioner does not disclose at the time an assignment is made whether it is an original assignment or a reassignment.

62. The Commissioner's making of original assignments after September 30, 1993 presents a pure question of law as to which a request for administrative review would have been futile, because the Commissioner had already predetermined the issue against all signatory operators and related persons, including the members of the Bellaire Group.

63. The Commissioner's original assignments made to the Bellaire Group after September 30, 1993, were arbitrary, capricious, an abuse of discretion, not in accordance with law, unwarranted by the facts, unsupported by the evidence, plainly erroneous and contained errors apparent from the face of the Commissioner's own records and/or from other information available to the Commissioner.

64. The Commissioner's unlawful original assignments of miners and their dependents to the Bellaire Group after September 30, 1993 has caused the Bellaire Group to incur premium obligations and other expenses and harm that it would not have incurred if the Commissioner had properly performed his duties under Section 9706 of the Coal Act.

COUNT V

65. The Bellaire Group hereby incorporates the averments in paragraphs 1 through 64, above.

66. The Commissioner has assigned numerous individual miners (and their dependents) to the Bellaire Group on the basis that the Bellaire Group has the highest assignment priority under Section 9706(a) of the Coal Act with respect to such miners. The Bellaire Group administratively appealed a number of such assignments on the basis that some other employer not related to the Bellaire Group in fact had a higher assignment priority and that the other employer or a related person remained in business and should receive the assignment. This Count concerns the Bellaire Group's appeals of such assignments which the Commissioner wrongly refused to revoke in a series of final decisions. The specific wrongly assigned individual miners and dependents, the date of the Bellaire Group's appeals and the date of the Commissioner's final administrative decisions are set forth in a chart attached hereto and incorporated herein as Exhibit AA.

67. Regulations issued at 20 C.F.R. Section 422.604, provide that once the Commissioner notifies an operator that it has been assigned miners, the operator may, within thirty (30) days, request additional information

concerning the work histories of the miners and the basis for the assignments.

68. The Bellaire Group timely requested information concerning each of the individual miners referenced on Exhibit AA.

69. The Bellaire Group appealed the assignments to it of each of the individual miners referenced on Exhibit AA. Each such appeal was timely made.

70. By several letters dated June 6, 1994; November 21, 1994; November 28, 1994; August 15, 1996; August 16, 1996; June 27, 1997; July 3, 1997; August 11, 1997; and July 8, 1998, the Bellaire Group provided information in support of its request for review of the individual miner assignments. In each such letter, the Bellaire Group showed that the assignments of the individual miners appealed in the particular letter were improper because the Coal Act required the Commissioner to assign the miners to other employers which had a higher assignment priority under the Coal Act with respect to the particular miners in question than did the Bellaire Group. Copies of the appeal letters relating to the individual miners referred to on Exhibit AA are attached as Exhibits D, E, H, J, N, Q, U, W, Y, DD, FF, HH, JJ, LL and MMM.

71. By several letters dated June 28, 1995; July 10, 1995; September 1, 1995; August 19, 1996; January 31, 1997; March 27, 1997; November 25, 1997; February 12, 1998; February 20, 1998; April 1, 1998; May 21, 1998; September 1, 1998; September 2, 1998; September 16, 1998; November 3, 1998; and April 19, 1999, the Commissioner issued final decisions in which he notified the Bellaire Group that he would not revoke the assignment of any of the individual miners referenced in

Exhibit AA. Copies of the final decisions relating to the individual miners referred to on Exhibit AA are attached hereto as Exhibits G, I, K, P, R, V, X, Z, BB, CC, EE, GG, II, KK, MM and NNN.

72. In issuing his final decisions with respect to a number of the Bellaire Group's administrative appeals, the Commissioner has wrongly refused to revoke certain individual assignments, referenced in Exhibit AA, at times reaching inconsistent results in appeals which presented identical factual and legal issues. The specific factual and legal issues inconsistently decided, the dates of the Bellaire Group's appeals on those miners, the dates of the Commissioner's final administrative decisions and the result reached are set forth in a chart attached hereto and incorporated herein as Exhibit NN. The Bellaire Group's appeal letters relating to inconsistent decisions are referenced in paragraph 70 above, except for a September 2, 1994 letter attached hereto as Exhibit 00. The Commissioner's inconsistent final decisions are referenced in paragraph 71, except for a November 27, 1995 decision attached hereto as Exhibit ZZ.

73. The Commissioner's assignments made to the Bellaire Group of the miners and dependents referred to in paragraph 66 and the Commissioner's inconsistent decisions referred to in paragraph 72, were arbitrary, capricious, an abuse of discretion, not in accordance with law, unwarranted by the facts, unsupported by the evidence, plainly erroneous and contained errors apparent from the face of the Commissioner's own records and/or from other information available to the Commissioner.

74. The Commissioner's unlawful assignments of miners and their dependents to the Bellaire Group and

inconsistent final decisions on identical factual and legal issues has caused the Bellaire Group to incur premium obligations and other expenses and harm that it would not have incurred if the Commissioner had properly performed his duties under Section 9706 of the Coal Act.

COUNT VI

75. The Bellaire Group hereby incorporates the averments in paragraphs 1 through 74, above.

76. The Commissioner has unlawfully reassigned miners and dependents among members of the Bellaire group [*sic*] because the liability of Bellaire and other members of the Bellaire Group, including North American and NACCO, is joint and several under the Coal Act, but is exclusively premised upon prior employment relationships which only Bellaire ever had with any retired miners or asset acquisitions to which only Bellaire was a party. Therefore, no member of the Bellaire Group can have any basis of liability different than Bellaire itself has; either all members are equally liable or no member is liable.

77. Whenever an assignment of a miner and/or his dependent was revoked by the Commissioner as to any member of the Bellaire Group, whether Bellaire itself, North American or NACCO, that final decision precluded reassignment of the same miner and/or dependents to another member of the Bellaire Group. Such reassignments constitute "double jeopardy" and undermine the finality of administrative decisions previously rendered by the Commissioner. The specific miners and dependents who have been the subject of assignment, appeal, revocation and subsequent unlawful reassignment within the Bellaire Group and the dates

of their respective appeals, revocations and reassignments are set forth in a chart attached hereto and incorporated herein as Exhibit AAA.

78. By several letters dated June 4, 1994; July 27, 1994; September 23, 1994; and January 9, 1995 various members of the Bellaire Group appealed the assignment of certain miners and dependents. Copies of the appeal letters are attached hereto as Exhibits BBB, DDD, FFF and JJJ.

79. By several letters dated August 15, 1995; September 1, 1995; January 11, 1996; and August 2, 1996, the Commissioner issued final affirmative decisions revoking the assignments referred to on Exhibit AAA. Copies of the affirmative final decisions are attached hereto as Exhibits CCC, EEE, GGG and KKK.

80. Subsequently, the Commissioner reassigned each of the miners referred to on Exhibit AAA to another member of the Bellaire Group, which other member of the Group appealed again by several letters dated August 16, 1996; June 27, 1997; and July 3, 1997. Copies of the second appeal letters are attached hereto as Exhibits Q, U, W, HHH and LLL.

81. By several letters dated March 27, 1997; February 20, 1998; and September 1, 1998, the Commissioner issued further final decisions, some negative and some affirmative, concerning some of these same miners. Copies of the second final decisions are attached hereto as Exhibits R, V, X and III. The second appeal attached hereto as Exhibit LLL remains pending with the Commissioner.

82. The Commissioner's unlawful reassignments among members of the Bellaire Group were arbitrary,

capricious, an abuse of discretion, not in accordance with law, unwarranted by the facts, unsupported by the evidence, plainly erroneous and contained errors apparent from the face of the Commissioner's own records and/or from other information available to the Commissioner.

83. The Commissioner's unlawful reassignments of miners and their dependents among members of the Bellaire Group has caused the Bellaire Group to incur premium obligations and other expenses and harm that it would not have incurred if the Commissioner had properly performed his duties under Section 9706 of the Coal Act.

WHEREFORE, the Bellaire Group respectfully requests that this Court (a) reverse the Commissioner's assignments and final decisions identified in Counts I - VI, above, and revoke or direct the Commissioner to correctly review the assignment to Bellaire of all of the miners (and their dependents) covered by those assignments and final decisions, (b) rescind any original assignment made by the Commissioner on or after October 1, 1993, (c) rescind all reassignment made by the Commissioner among members of the Bellaire Group, and (d) award the Bellaire Group costs of this action, counsel fees, and any other relief which this Court deems just and proper.

Respectfully submitted,

JONES, DAY, REAVIS & POGUE

/s/ By JOHN W. EDWARDS
JOHN W. EDWARDS
Ohio Supreme Court
No. 0010437
Trial Counsel

1900 Huntington Center
Columbus, Ohio 43215
614-469-3939

POLITO & SMOCK, P.C.

/s/ By THOMAS A. SMOCK
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Counsel for Bellaire Corporation,
NACCO Industries, Inc. and
The North American Coal
Corporation

Date: June 4, 1999

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 99-1035

SHENANGO INCORPORATED, *ET AL.*, PLAINTIFFS

v.

KENNETH S. APFEL, *ET AL.*, DEFENDANTS

DECLARATION OF CARL F. TENNILLE

Carl F. Tennille, being duly sworn, declares and states as follows:

1. I am an employee of the UMWA Combined Benefit Fund (the "Combined Fund"). The Combined Fund is jointly administered with several other ERISA plans, commonly known as the UMWA Health & Retirement Funds (the "Funds"). I am employed as the Funds' Comptroller.

2. I am responsible for the operation and guidance of the Comptroller's Division, which includes, among other things, overall supervision of accounting and financial reporting, collection of statutory premiums and contractual contributions, credit hours compliance, field audit, withdrawal liability and financial analysis for each of the Funds, including the Combined Fund. I am also responsible for ensuring that the Funds have adequate internal accounting controls and that the accounting conforms with GAAP, federal regulations, and Funds' policies.

3. In addition to my other responsibilities, I receive periodic notice from the Social Security Administration ("SSA") of assignments made by SSA pursuant to Section 9706 of the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act"). I oversee the process of billing operators to which beneficiaries have been assigned by SSA.

4. After the United States Court of Appeals for the Sixth Circuit issued its decision in *Dixie Fuel v. Apfel*, 171 F.3d 1052 (6th Cir. 1999), SSA provided the Combined Fund with information regarding beneficiaries assigned to operators for the first time after September 30, 1993. Based on the information provided by SSA, the Combined Fund has determined that the decision in *Dixie Fuel* has the potential to affect the assignments of 9,927 beneficiaries, if it were applied on a national basis. The numbers decline from year to year after the first plan year primarily due to mortality.

5. The 9,927 beneficiaries whose assignments could be affected by *Dixie Fuel* are assigned to 247 operators. These 247 operators have been assessed approximately $112 million for these beneficiaries and the Combined Fund's overall collection rate is more than 95%. Therefore, under the *Dixie Fuel* decision, approximately $105 million in premiums paid by these operators would be put in jeopardy. If these premiums are lost, the Combined Fund would be required to bill $48 million to the remaining assigned operators. In addition, the Combined Fund would bill the Abandoned Mine Reclamation Fund ("AML Fund") for the health benefit expenses for these newly unassigned beneficiaries for the years beginning October 1, 1995. If the

Combined Fund were to obtain payments from the AML Fund for these beneficiaries, it would require an estimated $60 and $80 million to cover the periods through September 30, 1999. Additional amounts would be billed to the AML Fund for the current plan year and for all succeeding plan years as long as any beneficiaries remained and as long as there was interest from the AML Fund available for this purpose.

6. The additional amounts that could potentially be billed to the interest earned on the AML Fund as a result of the *Dixie Fuel* decision would virtually eliminate the availability of that interest for other purposes both retroactively and prospectively.

I declare under penalty of perjury that the foregoing is true and correct this 18th day of November, 1999 at Washington, D.C.

/s/ CARL F. TENNILLE
Carl F. Tennille

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

CIVIL ACTION No. C2-99-532
JUDGE KINNEARY
MAGISTRATE JUDGE KING

BELLAIRE CORPORATION, NACCO INDUSTRIES, INC. AND THE NORTH AMERICAN COAL CORPORATION, PLAINTIFFS

v.

KENNETH S. APFEL, COMMISSIONER OF SOCIAL SECURITY, DEFENDANT

AFFIDAVIT OF DANIEL J. ROLLING

Before me, the undersigned authority, appeared DANIEL J. ROLLING who, being duly sworn, deposed and stated as follows:

1. I am the Property Manager of Bellaire Corporation ("Bellaire") and am authorized by it to make this Affidavit on its behalf. I am also authorized to make this Affidavit on behalf of NACCO Industries, Inc. and The North American Coal Corporation (collectively, with Bellaire, the "Bellaire Group").

2. I have reviewed the Commissioner of Social Security's answer to the Bellaire Group's interrogatory number 19 in the above captioned matter and compared the information contained in that interrogatory answer with the billing statements received from the UMWA Combined Benefit Fund by members of the Bellaire Group for the plan year beginning October 1, 1999 and concluding September 30, 2000. A copy of the Commissioner's pertinent interrogatory answer is attached

hereto as Exhibit A and copies of the current plan year Combined Benefit Fund billing statements directed to any member of the Bellaire Group which include any individual referenced on Exhibit A are attached hereto as Exhibits B and C.

3. Exhibit A identifies a total of 270 miners who were unassigned before October 1, 1993 and later became the subject of an original assignment on or after October 1, 1993 (referred to by the Commissioner in the interrogatory answer as "DIXIE-LIKE MINERS").

4. All 270 of the "DIXIE-LIKE MINERS" identified in Exhibit A are presently assigned to a member of the Bellaire Group. The 270 "DIXIE-LIKE MINERS", as well as any covered dependents, are included among the beneficiaries listed on Exhibits B and C, which show for each such beneficiary the number of plan years for which premiums have been assessed against a member of the Bellaire Group and the amount of such premiums.

5. I prepared two computer printouts detailing the financial impact of the unlawful assignments of the 270 "DIXIE-LIKE MINERS" and their dependents upon members of the Bellaire Group, which printouts are attached hereto as Exhibits D (Bellaire) and Exhibit E (The North American Coal Corporation).

6. The Bellaire Group has been assessed a total of $4,324,312.39 of excessive premiums by the Combined Benefit Fund as a result of the unlawful assignments of "DIXIE-LIKE MINERS" discussed herein, representing a total of 2122 beneficiary-year's worth of unlawful premiums.

7. Of the $4,324,312.39 total assessed against the Bellaire Group as a result of the unlawful assignment

of "DIXIE-LIKE MINERS" and their dependents, $3,841,222.81 was assessed against and paid by the Bellaire Group between February 1, 1993 and September 30, 1999 and $483,090.58 was assessed for the current plan year, which runs from October 1, 1999 to September 30, 2000. The current plan year premium assessment attributable to the 270 "DIXIE-LIKE MINERS" and their dependents is payable in twelve equal installments of $40,257.55, due on the 25th day of each month. The Bellaire Group has paid, as of the date of this Affidavit, $201,287.75 of the current year assessment for the 270 "DIXIE-LIKE MINERS" and their dependents.

8. Unless the 270 unlawful assignments of "DIXIE-LIKE MINERS" and their dependents are revoked, the Bellaire Group will continue to be assessed excessive premiums by the Combined Benefit Fund as long as any of the 270 "DIXIE-LIKE MINERS" and their dependents live.

/s/ DANIEL J. ROLLING
DANIEL J. ROLLING

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

CIVIL ACTION No. C2-99-532
JUDGE KINNEARY
MAGISTRATE JUDGE KING

BELLAIRE CORPORATION, ET AL., PLAINTIFFS

v.

KENNETH S. APFEL, DEFENDANT

DEFENDANT APFEL'S ANSWER AND OBJECTION TO PLAINTIFF'S INTERROGATORY NO. 19

Interrogatory 19. Please identify each and every miner and beneficiary who has been assigned to the Bellaire Group on or after October 1993 but who was not originally assigned to the Bellaire Group or some other operator on or before September 30, 1993.

Defendant's Answer to Interrogatory 19. Attachment A hereto, consisting of 28 pages, contains information from the Social Security Administration's Coal Act data base showing its current listing of the miners assigned to the Bellaire Group on or after October 1, 1993, but who were not originally assigned to the Bellaire Group or some other operator on or before September 30, 1993.

I declare under penalty of perjury that the foregoing was provided to me by the Social Security Staff, and to the best of my knowledge and belief, is true and correct. Executed on February 15, 2000.

/s/ LAURENCE A. MILLER
LAURENCE A. MILLER, Branch Chief
Disability Litigation Branch
Litigation Staff

Defendant's Objection to Interrogatory 19. The interrogatory as originally posed requested information on both miners and beneficiaries not originally assigned on or before September 30, 1993. The data base used to provide the answer is keyed to miners, not beneficiaries. It is defendant's counsel's understanding that plaintiffs' counsel have subsequently agreed that the interrogatory answer may be limited to identifying the miners. To the extent that understanding is incorrect, and the interrogatory is read to require identification of beneficiaries, defendant objects on the ground that the interrogatory so read would be unduly burdensome and that the value of the further information concerning beneficiaries would be minimal in comparison to that burden.

Respectfully submitted.

DAVID W. OGDEN
Acting Assistant Attorney General
Civil Division

SHARON J. ZEALEY
United States Attorney

ROBERT L. SOLOMON
Assistant United States Attorney

/s/ RICHARD G. LEPLEY
RICHARD G. LEPLEY
BRIAN G. KENNEDY
Department of Justice
Civil Division, Room 1082
901 E Street, N.W.
Washington, D.C. 20530
Telephone: (202) 514-3357

Counsel for Defendant

ATTACHMENT A

02/14/00 BELLAIRE CORP (EIN 34-043129[illegible]) DIXIE-LIKE MINERS

1		ABELE	JOHN	S	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
2		ARAKI	SANJIRO		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
3		BAKER	CLARENCE	G	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
4		BARKER	WESLEY	R	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
5		BARTHOLOMEW	BLAIR		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
6		BARTON	JAMES	E	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
7		BAUER	FRANKLIN	A	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
8		BELL	ANDREW	C	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
9		BENDETTI	FRANK	C	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
10		BERGAMO	CHARLES	W	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
11		BIERNOT	JOSEPH		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
12		BLACKHAM	JOHN	R	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
13		BLACKHAM	LESTER		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
14.		BONACCI	VITO	A	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

15

	BROOKINS	PERRY			
CURRENT	BELLAIRE CORP			NOTICE SENT	1995/09/26
PRIOR	NO PRIOR OPERATOR			NOTICE SENT	0000/00/00

16

	BROOKS	JOHN	K		
CURRENT	BELLAIRE CORP			NOTICE SENT	1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT	0000/00/00

17

	BROWN	FREELAN	A		
CURRENT	BELLAIRE CORP			NOTICE SENT	1995/09/20
PRIOR	NO PRIOR OPERATOR			NOTICE SENT	0000/00/00

18

	BROWN	ORRIE			
CURRENT	BELLAIRE CORP			NOTICE SENT	1993/10/20
PRIOR	NO PRIOR OPERATOR			NOTICE SENT	0000/00/00

19

	BRUCE	WESLEY	L		
CURRENT	BELLAIRE CORP			NOTICE SENT	1995/09/20
PRIOR	NO PRIOR OPERATOR			NOTICE SENT	0000/00/00

20

	BRUNO	JOHN	A		
CURRENT	BELLAIRE CORP			NOTICE SENT	1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT	0000/00/00

21

	BRYAN	THEODORE	C		
CURRENT	BELLAIRE CORP			NOTICE SENT	1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT	0000/00/00

22

	BURINDA	LOUIS	J		
CURRENT	BELLAIRE CORP			NOTICE SENT	1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT	0000/00/00

23

	BURNSIDE	CLYDE			
CURRENT	BELLAIRE CORP			NOTICE SENT	1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT	0000/00/00

24

	BYERS	SOLOMON	S		
CURRENT	BELLAIRE CORP			NOTICE SENT	1995/06/30
PRIOR	NO PRIOR OPERATOR			NOTICE SENT	0000/00/00

25

	CALINGER	JOSEPH			
CURRENT	BELLAIRE CORP			NOTICE SENT	1996/09/16
PRIOR	WHEELING-PITTSBURGH STEEL CORP			NOTICE SENT	1993/10/20

26

	CALINGER	THOMAS			
CURRENT	BELLAIRE CORP			NOTICE SENT	1995/09/20
PRIOR	NORTH AMERICAN COAL CORP			NOTICE SENT	1993/10/20

27

	CALLOR	FIORE			
CURRENT	BELLAIRE CORP			NOTICE SENT	1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT	0000/00/00

28		CAMPBELL	ROBERT	C	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
29		CHA	LAURENCE		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/06/30
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
30		CHRISTENSEN	VICTOR	M	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
31		CIPRESSI	ANTONIO		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
32		CLARK	JAMES		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
33		CLARK	THOMAS	M	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	HAWLEY COAL MINING CORP.			NOTICE SENT 0000/00/00
34		COLUMBUS	RALPH	F	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
35		COTTELLO	MICHAEL		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
36		CRAIG	JAMES	C	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
37		CRAZE	THOMAS		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
38		CROCCO	STANLEY		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
39		CUSKEY	JOHN		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
40		DAVIS	CLARENCE		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
41		DAVIS	FRED	A	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

42

	DELVECCHIO	FRANK		
CURRENT	BELLAIRE CORP			NOTICE SENT 1995/06/30
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

43

	DEROSE	DOMINIC		
CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
PRIOR	NORTH AMERICAN COAL CORP			NOTICE SENT 1993/10/20

44

	DIERKES	EARL	E	
CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

45

	DOLES	PAUL	E	
CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

46

	DOMOKOS	MOSES		
CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

47

	DONOHUE	CHRISTOPHE	H	
CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

48

	DRAKE	GEORGE	W	
CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

49

	DRENNAN	WILLIAM	E	
CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

50

	DUNLAP	JESSE	W	
CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

51

	DYER	HARRISON		
CURRENT	BELLAIRE CORP			NOTICE SENT 1995/06/30
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

52.

	EMBREY	ERNEST	A	
CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

53

	FAZZIO	JOSEPH		
CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

54

	FILIGNO	JOSEPH		
CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

57		FORD	WILLIE	M	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/06/30
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
58		FULTON	JAMES	J	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
57		FURBEE	WILLIAM	C	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
58		GARCIA	ENRIQUE		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
59		GATCHEL	GEORGE	R	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
60		GAY	CLEMITH	C	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
61		GENETIN	ERNESTO		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/06/30
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
62		GLATZER	HERMAN	C	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
63		GOODRICH	HOWARD	M	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
64		GOTTARDI	CHARLES	J	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
65		GOUDY	ADAM	L	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/06/30
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
66		GREEN	CHARLES		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1999/09/29
	PRIOR	EASTERN ENTERPRISES			NOTICE SENT 1997/09/22
67		GREGG	MICHAEL	A	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
68		GRIFFIN	JOSEPH	S	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/06/30
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

64		HAIRSTON	JOHN	V	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
70		HALPENNY	HOWARD	B	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
71		HAMROCK	EDWARD	L	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
72		HARLAN	RODNEY	E	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
73		HARRIS	CHALRES	H	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
74		HATSIS	CHARLES		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
75		HELSTEN	FRANK	T	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
76		HENRY	E	L	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
77		HEPNER	CHARLES	W	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
78		HERRERA	MOISES		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/06/30
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
79		HESS	RUSSELL	C	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
80		HOLMAN	DAVID	L	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
81		HORNER	JOSEPH		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

82
HORVATH STEVE
CURRENT BELLAIRE CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

83
HORVATH STEVE F
CURRENT BELLAIRE CORP NOTICE SENT 1995/09/20
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

84
HOWARD CARL W
CURRENT BELLAIRE CORP NOTICE SENT 1993/10/20
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

85
HUDNALL RUSSELL C
CURRENT BELLAIRE CORP NOTICE SENT 1993/10/20
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

86
HUNTER DANFORD
CURRENT BELLAIRE CORP NOTICE SENT 1993/10/20
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

87
HUNTSMAN ARTHUR L
CURRENT BELLAIRE CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

88
INNOCENTI OSCAR P
CURRENT BELLAIRE CORP NOTICE SENT 1993/10/20
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

89
JACKSON JAMES A
CURRENT BELLAIRE CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

90
JENDRUSIK STANLEY J
CURRENT BELLAIRE CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

91
JOHNSON GERNIE W
CURRENT BELLAIRE CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

92
JOHNSON LONNIE C
CURRENT BELLAIRE CORP NOTICE SENT 1993/10/20
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

93
JOHNSON WILLIAM
CURRENT BELLAIRE CORP NOTICE SENT 1995/09/20
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

94
JONES PAUL H
CURRENT BELLAIRE CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

95
JOYNSON ARTHUR A
CURRENT BELLAIRE CORP NOTICE SENT 1993/10/20
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

96		JUVAN	ANDY		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
97		KALDOR	FRANK		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
98		KEENEY	ROBERT	L	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
99		KELLY	HOWARD		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
100		KENNEY	NOAH	E	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
101		KOVACHIC	ANTHONY		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
102		KUZEMCHAK	METRO		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
103		LENARZ	K		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
104		LOCKHART	HAROLD	L	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
105		LOUDEN	CYRIL	C	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/06/30
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
106		LYNN	HERMAN	B	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
107		MACKINAW	PAUL		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
108		MANUILOW	ANDY		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NORTH AMERICAN COAL CORP			NOTICE SENT 1993/10/20

109		MARTIN	THOMAS	W	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
110		MAY	GEORGE	W	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
111		MCCORN	C		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
112		MEADOWS	OFFORD		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
113		MEDINA	ALBERT	E	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
114		MERLO	PHILLIP		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
115		MICHAEL	PAUL		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1998/09/30
	PRIOR	KESSCOALS, INC.			NOTICE SENT 1993/10/20
116		MOKROS	FRANK		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
117		MONAHAN	GUY	S	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
118		MONROE	CHESTER	A	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
119.		MOORE	RICHARD	D	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
120.		MOORE	STANLEY	W	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
121		MORTENSEN	HAROLD	G	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
122		MURRAY	CLYDE	B	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

123		MUTSKO	JOSEPH		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
124		NELSON	EDWARD	W	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
125		NELSON	ELBERN	O	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
126		NELSON	SAWYER	A	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
127		NEWHART	JOHN	W	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
128		NEWKIRK	LOUIS	V	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
129		OKTABETZ	JAMES	J	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
130		PALMER	HARRY	C	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/06/30
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
131		PANDZIK	JOSEPH		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
132		PARKER	WILLIAM	C	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
133		PERSINGER	ERNEST		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
134		PERSINGER	HUGH	E	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
135		PHILLIS	HARRY	T	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

136		PLAVKA	PAUL		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1997/09/22
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
137		RAPTOSH	NICK		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
138		RASMUSSEN	DULAN	O	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
139		RASMUSSEN	LAWRENCE	E	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
140		RAVENCRAFT	JAMES	A	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
141		RAY	GEORGE	M	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
142		REDD	JOHN	D	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
143		REED	WILLIAM	C	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
144		REGIS	LARRY		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
145		REYNOLDS	P	B	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1997/09/22
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
146		ROBERTSON	CLEO	G	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
147		ROBSON	JOHN	W	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
148		RODKEY	WILLIAM		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
149		RUMMEL	HARRY		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

150		SABO	FRANCIS		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
151		SAFFELL	DELBERT	C	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
152		SALLAS	JOHN		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
153		SAYLOR	MURLIE	G	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1999/09/29
	PRIOR	EASTERN ENTERPRISES			NOTICE SENT 1996/09/16
154		SCHOKORA	JOHN	S	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1997/09/22
	PRIOR	BERWIND CORPORATION			NOTICE SENT 1993/10/20
155		SCHULTZ	THOMAS	M	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
156		SHAMBLIN	OLGA		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
157		SHIFFLETT	HEZEKIAH	A	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
158		SHILEY	WILBERT		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
159		SKUKAN	FRANK		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
160		SMITH	EDWARD		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
161		SMITH	HENRY	L	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
162		SPENSKO	ALFONSI		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

163		STAIR	CLARENCE	E	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NORTH AMERICAN COAL CORP			NOTICE SENT 1993/10/20
164		STATEN	STANLEY		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
165		STEVENS	STEPHEN	L	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1997/09/22
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
166		STEWART	ALVIN	T	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
167		STEWART	LOWELL	J	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	PEABODY COAL CO.			NOTICE SENT 1993/10/20
168		STREETS	AMOS	S	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
169		TAMLLOS	STEVE	G	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
170		TOMASZEWSKI	WALTER		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
171		TOMLINSON	JOSEPH	H	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
172		TRAYLINEK	JOHN	J	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
173		TRAYLINEK	JOSEPH		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
174		TRIGG	WILLIAM	M	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
175		TUCKER	CLARENCE	J	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/06/30
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
176		TURKOLY	MATTHEW		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1995/06/30
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

177

		TURNER	JOE		
CURRENT	BELLAIRE CORP			NOTICE SENT	1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT	0000/00/00

178

		VARGO	TONY		
CURRENT	BELLAIRE CORP			NOTICE SENT	1993/10/20
PRIOR	NO PRIOR OPERATOR			NOTICE SENT	0000/00/00

179

		VINCENT	JOHN		
CURRENT	BELLAIRE CORP			NOTICE SENT	1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT	0000/00/00

180

		VOLECK	ANTHONY		
CURRENT	BELLAIRE CORP			NOTICE SENT	1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT	0000/00/00

181

		VUKSINICK	MARTIN	A		
CURRENT	BELLAIRE CORP				NOTICE SENT	1993/10/20
PRIOR	NO PRIOR OPERATOR				NOTICE SENT	0000/00/00

182

		WALLACE	DONALD	E		
CURRENT	BELLAIRE CORP				NOTICE SENT	1995/09/20
PRIOR	NO PRIOR OPERATOR				NOTICE SENT	0000/00/00

183

		WARBEL	CYPRIAN			
CURRENT	BELLAIRE CORP				NOTICE SENT	1996/09/16
PRIOR	NO PRIOR OPERATOR				NOTICE SENT	0000/00/00

184

		WATKINS	EDWARD	C		
CURRENT	BELLAIRE CORP				NOTICE SENT	1996/09/16
PRIOR	NO PRIOR OPERATOR				NOTICE SENT	0000/00/00

185

		WEIL	RUSSELL	E		
CURRENT	BELLAIRE CORP				NOTICE SENT	1995/09/20
PRIOR	NO PRIOR OPERATOR				NOTICE SENT	0000/00/00

186

		WIDMOR	F	J		
CURRENT	BELLAIRE CORP				NOTICE SENT	1996/09/16
PRIOR	NO PRIOR OPERATOR				NOTICE SENT	0000/00/00

187

		WILLIAMS	HOWARD	J		
CURRENT	BELLAIRE CORP				NOTICE SENT	1996/09/16
PRIOR	NO PRIOR OPERATOR				NOTICE SENT	0000/00/00

188

		WINES	RUSSELL	H		
CURRENT	BELLAIRE CORP				NOTICE SENT	1996/09/16
PRIOR	NO PRIOR OPERATOR				NOTICE SENT	0000/00/00

189

		WOOD	MARTIN	C		
CURRENT	BELLAIRE CORP				NOTICE SENT	1995/06/30
PRIOR	NO PRIOR OPERATOR				NOTICE SENT	0000/00/00

190		WOODRUM	JAMES	H	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
191		YOUNG	CLARENCE	H	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
192		ZACCHINI	ERNEST		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
193		ZATEZALO	NICK		
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
194		ZYCHAL	FRANK	G	
	CURRENT	BELLAIRE CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

TOTAL MINERS: 194

195		ALBUS	HAROLDE	E	
	CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1995/06/30
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
196		ANTOSZ	ANDREW		
	CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
197		BAKER	HARRY		
	CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
198		BALLOG	EDWARD	G	
	CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
199		BALSER	MAYWOOD		
	CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
200		BAUGHMAN	ORVILLE		
	CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
201		BLOUNT	EUGENE	L	
	CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
202		BROWN	SAM	S	
	CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
203		BROWN	WILLIAM	R	
	CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1995/09/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
204		BURGY	WILLIAM		
	CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1993/10/20
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
205		CARLEVATO	S		
	CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
206		CARMAN	CLARENCE		
	CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
207		CARR	ALMA	B	
	CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
	PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00
208		CIOFANI	ANDREW		
	CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1998/09/30
	PRIOR	WHEELING PITTSBURGH STEEL CORP			NOTICE SENT 1995/06/30

209 COLES WILLIE
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1999/09/29
PRIOR CONSOLIDATION COAL COMPANY NOTICE SENT 1996/09/16

210 COOK ALBERT F
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1997/09/22
PRIOR PEABODY COAL CO. NOTICE SENT 1996/09/16

211 CROW CLARENCE
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

212 DILLARD JOHN R
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

213 DINARDO JOHN B
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

214 DOTY GEORGE W
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

215 EARY RUBY
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

216 EIKLER WILLIAM H
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

217 ELSWICK JUBE
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

218 FERREL CHARLES E
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

219 FUSCO GUY
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

220 GAGICH PETE
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

221 HANSCN ORVILLE P
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

222 HARPER JAMES F
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

223 HAYCOCK ROBERT M
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/22
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

224 HELMS HARRY
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

225 HIVICK FRANK J
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1995/06/30
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

226 HOWELL P R
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

227 HRANKO JOSEPH
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

228 HUDNALL ROBERT
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

229 HYTHON ANDREW M
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1995/09/20
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

230 JACKSON JOSEPH
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

231 JENNEWEIN GEORGE D
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

232 KIDD JAMES F
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1995/09/20
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

233 KIRBY ARTHUR L
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

234 KORAN JOHN H
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1995/06/30
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

235 KRIECHBAUM ARTHUR W
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR BELLAIRE CORP NOTICE SENT 1993/10/20

236

	KRNJAICH	AUSTIN		
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

237

	KULP	GEORGE	L	
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1995/06/30
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

238

	LELLI	JOSEPH		
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

239

	LENDON	WILBUR	F	
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1995/06/30
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

240

	LYONS	MIKE	H	
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

241

	MAYNOR	EUGENE	V	
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

242

	MINDER	WILLIAM	E	
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

243

	MONTE	CHARLES	E	
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1995/06/30
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

244

	MORRIS	EUGENE		
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1995/09/20
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

245

	MULLINS	EMORY	F	
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

246

	NOLLGE	JULIAN	F	
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

247

	NOVAK	GUS		
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

248

	PATTERSON	RALPH	G	
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

249

	PERSINGER	CLAYTON	E	
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

250

	POZELL	LARRY		
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

251

	RIDER	HONZURA		
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

252

	RYLANT	FERRELL	W	
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/30
PRIOR	CONSOLIDATION COAL COMPANY			NOTICE SENT 1996/09/16

253

	SAMPEDRO	JESS		
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

254

	SANER	HARRY	E	
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

255

	SCOPEL	CASIMIRO	A	
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

256

	SCOTT	CHARLES	F	
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1995/09/20
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

257

	SEAMAN	GEORGE	S	
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

258

	SELMON	GEORGE	E	
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1993/10/20
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

259

	SELMON	GEORGE	J	
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1995/06/30
PRIOR	WYOMING POCAHONTAS LAND CO.			NOTICE SENT 1993/10/20

260

	SLATE	WILLIAM	J	
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1996/09/16
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

261

	SLATTE	MIKE	T	
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1995/09/20
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

262

	SOKA	JULIUS		
CURRENT	NORTH AMERICAN COAL CORP			NOTICE SENT 1995/06/30
PRIOR	NO PRIOR OPERATOR			NOTICE SENT 0000/00/00

BEST AVAILABLE COPY

263 SOVKA WILLIAM L
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

264 STUKEY PAUL M
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1995/08/30
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

265 TENCH ROBERT L
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1999/09/29
PRIOR EASTERN ENTERPRISES NOTICE SENT 1996/09/16

266 THOMPKINS GRANT E
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1995/09/20
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

267 TOWNSEND LEON F
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

268 TURNER EARLY A
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1999/09/29
PRIOR EASTERN ENTERPRISES NOTICE SENT 1996/09/16

269 WOOTEN SALEM R
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1997/09/22
PRIOR PEABODY COAL CO. NOTICE SENT 1995/09/20

270 YOST HOWARD W
CURRENT NORTH AMERICAN COAL CORP NOTICE SENT 1996/09/16
PRIOR NO PRIOR OPERATOR NOTICE SENT 0000/00/00

TOTAL MINERS: 76

TOTAL MINERS: 0

Omitted from reproduction in the joint appendix at this point are two further exhibits to the Rolling affidavit, consisting of two letters, each dated October 14, 1999, from the Co-Administrators of the UMWA Combined Benefit Fund to Bellaire Corporation and North American Coal Corporation, each followed by calculations of each corporation's liability to the Combined Fund and a list of miners assigned to each corporation. Those materials may be found in at pages 110-201 of the joint appendix filed in the Sixth Circuit in *Bellaire Corp., et al.* v. *Apfel, et al.*, Nos. 00-4080 and 00-4082.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

CIVIL ACTION No. C2-99-532
JUDGE KINNEARY
MAGISTRATE JUDGE KING

BELLAIRE CORPORATION, ET AL., PLAINTIFFS

v.

KENNETH S. APFEL, DEFENDANT

DEFENDANT APFEL'S ANSWER

FIRST DEFENSE

To the extent, if any, that plaintiffs seek to recover money damages or any monetary relief of any kind against defendant, the United States, or any officer or agency of the United States, the Court lacks jurisdiction over the subject matter of the action.[1]

SECOND DEFENSE

To the extent, if any, that plaintiffs seek to recover money damages or any monetary relief of any kind against defendant, the United States, or any officer or

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[1] At the telephonic preliminary pretrial conference of November 10, 1999, plaintiffs' counsel indicated that no monetary relief was sought against the United States or any of its officers or agencies. However, ¶ 11 of the Complaint asserts that jurisdiction exists under 28 U.S.C. § 1346, and that assertion has not been deleted from the Complaint. Thus, defenses against possible monetary claims are included out of an abundance of caution in view of ¶ 11 of the Complaint.

agency of the United States, this action is an unconsented-to suit against the United States and is barred by the sovereign immunity of the United States to such suits.

THIRD DEFENSE

To the extent, if any, that plaintiffs seek recovery or refund of any taxes, this action is barred by plaintiffs' failure to submit a claim for refund to the Secretary of the Treasury.

FOURTH DEFENSE

To the extent, if any, that plaintiffs seek recovery on account of any tort, this action is barred by plaintiffs' failure to submit a claim for a sum certain to the appropriate federal agency.

FIFTH DEFENSE

The Complaint fails to state a claim upon which relief can be granted.[2]

SIXTH DEFENSE

In Count V of the Complaint, plaintiffs challenge assignments on the gound that other employers or entities should have received the assignments, and hence the liabilities associated with such assignments. Complaint ¶ 66. Such other employers or entities are parties who should be joined, if feasible, to this action,

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[2] With respect to Count IV, defendant recognizes that this Court is bound by the decision in *Dixie Fuel Co.* v. *Apfel*, 171 F.3d 1052 (6th Cir. 1999). The Commissioner respectfully reserves the right to present to this Court his position that *Dixie* was wrongly decided to the extent necessary to preserve that argument for possible reconsideration by the Court of Appeals.

pursuant to Rule 19, Federal Rles of Civil Procedure. The Complaint fails to join those parties to this action.

SEVENTH DEFENSE

1. On January 29, 1993, plaintiff Bellaire initiated a civil action in the United States District Court for the District of Columbia against, *inter alia*, defendant's official predecessor in function, the Secretary of Health and Human Services, challenging liabilities imposed on the Bellaire Group by the Coal Industry Retiree Health Benefit Act of 1992 ("the Coal Act"). *Bellaire Corporation, Inc. et al v. Donna E. Shalala, et al.*, Civil Action Number 93-0183 (D.D.C.) ("*Bellaire I*").

2. The Complaint in *Bellaire I* challenged such liabilities on the grounds that the Coal Act, as applied to Bellaire, violated the Due Process Clause and Takings Clause of the Fifth Amendment to the United States Constitution.

3. On May 7, 1997, *Bellaire I* was dismissed with prejudice on the merits. *See Bellaire Corp v. Shalala*, 995 F. Supp. 125 (D.D.C. 1997).

4. Accordingly, Count III of the complaint is barred by the doctrine of claim preclusion, or res judicata.

EIGHTH DEFENSE

1. On January 29, 1993, plaintiff Bellaire initiated a civil action in the United States District Court for the District of Columbia against, *inter alia*, defendant's official predecessor in function, the Secretary of Health and Human Services, challenging liabilities imposed on the Bellaire Group by the Coal Industry Retiree Health Benefit Act of 1992 ("the Coal Act"). *Bellaire Corpora-*

tion, Inc. et al. v. Donna E. Shalala, et al., Civil Action Number 93-0183 (D.D.C.) ("*Bellaire I*").

2. The Complaint in *Bellaire I* challenged such liabilities on the grounds that the Coal Act, as applied to Bellaire, violated the Due Process Clause and Takings Clause of the Fifth Amendment to the United States Constitution.

3. On May 7, 1997, *Bellaire I* was dismissed with prejudice on the merits. *See Bellaire Corp v. Shalala*, 995 F. Supp. 125 (D.D.C. 1997).

4. Accordingly, issue preclusion (collateral estoppel) bars plaintiffs' arguments that the Coal Act cannot be constitutionally applied to them and bars Count III of the Complaint.

NINTH DEFENSE

1. On January 29, 1993, plaintiff Bellaire initiated a civil action in the United States District Court for the District of Columbia against, *inter alia*, defendant's official predecessor in function, the Secretary of Health and Human Services, challenging liabilities imposed on the Bellaire Group by the Coal Industry Retiree Health Benefit Act of 1992 ("the Coal Act"). *Bellaire Corporation, Inc. et al v. Donna E. Shalala, et al.*, Civil Action Number 93-0183 (D.D.C.).

2. On May 7, 1997, *Bellaire I* was dismissed with prejudice on the merits. *See Bellaire Corp. v. Shalala*, 995 F. Supp. 125 (D.D.C. 1997).

3. In a filing made with its motion for summary judgment in *Bellaire I*, Bellaire represented that the liability Bellaire challenged related to "about 1400 . . . former Bellaire employees and their spouses or dependents." Affidavit of Donald Grischow, Controller and

Treasurer of Bellaire, ¶ 8 (May 13, 1993). In a filing dated May 3, 1995, Bellaire further represented that the number of assigned beneficiaries at issue in the case was still "approximately 1200."

4. Defendant and his agent lack personal knowledge of which assignments were or were not included by Bellaire in its representations that about 1400 or, later, approximately 1200 assignments were at issue in *Bellaire I* and whether or not such assignments at issue in *Bellaire I* include assignments Bellaire seeks to challenge in this case. At this time, such information is known exclusively to Bellaire and its agents and is presumably discoverable from Bellaire.

5. To the extent, if any, that the liabilities plaintiffs seek to challenge in this action are the same liabilities that Bellaire represented to the court in *Bellaire I* were at issue in *Bellaire I*, Counts I, II, III, V, and VI are barred by the doctrine of claim preclusion, or res judicata.

TENTH DEFENSE

1. In Count IV, plaintiffs challenge as having been made in an insufficiently timely fashion assignments that were made after September 30, 1993.

2. The allegedly unlawfully delayed assignments were allegedly made by defendant between October 7 and October 18, 1993, *i.e.*, between 7 days and 18 days later than plaintiffs contend was required.

3. Plaintiffs did not file this challenge to these assignments that were allegedly 7 to 18 days late until June, 1999, and did not serve the Complaint until August, 1999.

4. On information and belief, in the intervening nearly six years, the United Mine Workers of America Combined Benefit Fund ("the Combined Fund") relied upon such assignments and would be prejudiced if such assignments were revoked at this late date.

5. To the extent that revocation of these assignments would necessitate increased transfers of money to the Combined Fund from the Abandoned Mine Reclamation Fund, the Secretary of Interior, who administers the Abandoned Mine Reclamation Fund, and the interests served by the Abandoned Mine Reclamation Fund would be prejudiced if the assignments were revoked at this late date.

6. Accordingly, Count IV of the Complaint is barred by laches.

ELEVENTH DEFENSE

1. In Counts I, II, III, V, and VI, plaintiffs challenge assignments that were made to them based on final decisions made on different dates, from as early as June 28, 1995, to as late as April 19, 1999. Complaint ¶¶ 28, 41, 71, 81.

2. Plaintiffs did not file this action challenging those assignments until June, 1999, and did not serve the Complaint until August, 1999.

3. While some delay in challenging the first assignment decisions may have been motivated by a desire to avoid seriatim litigation, undue multiplicity of litigation could also have been avoided by a prompter challenge to the early final decisions combined with periodic supplementation of the pleadings.

4. In Count V, plaintiffs' claims depend on the argument that some other entity should have been assigned

the liability instead because it had a higher assignment priority. While, in Counts I, II, III, and VI, plaintiffs do not argue that another entity had a higher assignment priority, if the assignments to plaintiffs are voided, in some cases there may be other entities who would have been assigned the liability were it not for the Commissioner's determination that the assignments were properly made to plaintiffs. Thus, under Count V it is certain, and under Counts I, II, III, and VI it is possible, that a voiding of the assignments to plaintiffs on a timely basis would have resulted in another entity being liable. Those liabilities are for the period beginning October 1, 1993 until the death of the beneficiary or beneficiaries with respect to each such assignment.

5. Plaintiffs' delay in challenging their assignments may make it infeasible to impose responsibility for those assignments upon other entities to whom such responsibility could have been reassigned in the event of a more timely challenge. To that extent, Count I, II, III, V, and VI are barred by laches.

TWELFTH DEFENSE

Plaintiffs have failed to exhaust their administrative remedies with respect to Count IV.[3]

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[3] Defendant recognizes that this Court is bound by the decision in *Dixie Fuel Co. v. Apfel*, 171 F.3d 1052 (6th Cir. 1999). The Commissioner respectfully reserves the right to present to this Court his position that *Dixie* was wrongly decided to the extent necessary to preserve that argument for possible reconsideration by the Court of Appeals.

THIRTEENTH DEFENSE

Answering the specific numbered paragraphs of plaintiffs' amended complaint using paragraph numbering corresponding to the paragraph numbers of the complaint, defendant states:

1. The first sentence contains plaintiffs' characterization of their action to which no response is required; if a response is required, said allegations are denied. The second sentence is admitted. The third sentence is denied. The fourth sentence is denied, except that it is admitted that NACCO and North American are related persons to Bellaire within the meaning of the Coal Act. Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of the fifth sentence, except that it is admitted that any appeals by any members of the Bellaire Group were prepared on Bellaire Corporation letterheads. The sixth sentence does not contain averments of fact to which an answer is required, but does contain plaintiff's adoption of "Bellaire Group" as a shorthand reference to all three plaintiffs; this Answer will also use "Bellaire Group" synonymously with "plaintiffs" or "the plaintiff companies," unless specific reference is made to one of the individual companies.

2. The first sentence contains plaintiffs' characterization of their action to which no response is required; if a response is required, said allegations are denied. The second sentence is denied.

3. The first sentence contains plaintiffs' characterization of their action to which no response is required; if a response is required, said allegations are denied. The second sentence contains plaintiffs' characterization of the Supreme Court's decision in *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998), which decision speaks for itself. The third sentence is admitted. The fourth sentence is denied, except that it is admitted that ICC signed a Coal Wage Agreement in 1966, that during the pendency of the agreement the Bellaire Group bought ICC's business, that Bellaire thereafter signed, *inter alia*, the 1974, 1978, 1981, and 1984 NBCWAs, that Cambria signed a Coal Wage Agreement in 1954, that during the pendency of the agreement the Belllaire Group bought Cambria's business, and that Bellaire thereafter signed, *inter alia*, the 1974, 1978, 1981, and 1984 NBCWAs. The fifth sentence is denied. The sixth sentence is denied.

4. The first sentence contains plaintiffs' characterization of their action to which no response is required; if a response is required, said allegations are denied. The second sentence and the citation following that sentence contain plaintiffs' characterization of the Coal Act, the provisions of which speak for themselves. The third sentence is denied.

5. The first sentence contains plaintiffs' characterization of their action to which no response is required; if a response is required, said allegations are denied. The second and third sentences are denied.

6. The first sentence contains plaintiffs' characterization of their action to which no response is required; if a response is required, said allegations are denied. The remaining allegations of the paragraph are denied, except it is admitted that the obligations of the companies of the Bellaire Group under the Coal Act are joint and several obligations.

7. Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 7 of the Complaint, except it is admitted that plaintiff Bellaire has reported that its principal place of business is at 14785 Preston Road, Suite 1100, Dallas, Texas 75240-7891.

8. Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 8 of the Complaint, except it is admitted that plaintiff NACCO has reported that its principal place of business is at 5875 Landerbrook, Suite 300, Mayfield Heights, Ohio 44124.

9. Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 9 of the Complaint, except it is admitted that plaintiff North American has reported that its principal place of business is at 14785 Preston Road, Suite 1100, Dallas, Texas 75240-7891.

10. The first and third sentences are admitted. The second sentence is admitted, and it is further averred that the Commissioner also maintains a principal office in Washington, D.C.

11. Denied, except it is admitted that, if plaintiffs do not seek any monetary relief against the defendant, the United States, or any officer or agency of the United States, jurisdiction over this action arises under 28 U.S.C. § 1331.

12. Admitted.

13. Paragraph 13 of the Complaint contains plaintiffs' characterization of the Coal Act, the provisions of which speak for themselves.

14. Paragraph 14 of the Complaint contains plaintiffs' characterization of the Coal Act, the provisions of which speak for themselves.

15. Paragraph 15 of the Complaint contains plaintiffs' characterization of the Coal Act, the provisions of which speak for themselves.

16. Paragraph 16 of the Complaint contains plaintiffs' characterization of the Coal Act, the provisions of which speak for themselves.

17. Paragraph 17 of the Complaint contains plaintiffs' characterization of the Coal Act, the provisions of which speak for themselves.

18. Defendant hereby incorporates by reference his answers and other responses to paragraphs 1-17 of the Complaint.

19. The first sentence is admitted. The second and third sentences refer to the cited Guidelines, which Guidelines speak for themselves.

20. Admitted.

21. Denied, except it is admitted that the Commissioner assigned ICC miners and their dependents to the Bellaire Group and that he determined that ICC had employed the miners under a Coal Wage Agreement and would have received the assignments had it still been in business, that no related persons of ICC other than the Bellaire Group were still in business, and that a member of the Bellaire Group had acquired ICC's coal mining business in 1968.

22. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments in the first sentence. The second sentence is denied.

23. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments in the first sentence, except to admit that in 1968 a member of the Bellaire Group purchased ICC's coal mining business. The remainder of the paragraph contains plaintiffs' characterization of documents they supplied to the Commissioner in connection with their appeals, and said documents speak for themselves.

24. Paragraph 24 of the Complaint contains plaintiffs' characterization of regulations, the provisions of which speaks for themselves.

25. Admitted.

26. Denied, except: 1) that it is admitted that plaintiffs timely appealed the assignments to them of each ICC miner except for Martin A. Vuksinick; 2) that it is admitted that plaintiffs filed an untimely appeal of the assignments of Martin A. Vuksinick; 3) that defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations that plaintiffs believed that Mr. Vuksinick was deceased and that such belief was reasonable; and 4) that defendants lack knowledge or information sufficient to form a belief as to the date on which plaintiffs learned that Mr. Vuksinick was not deceased.

27. The first and third sentences are admitted. The second sentence is denied.

28. Admitted.

29. Denied.

30. Denied.

31. Defendant hereby incorporates by reference his answers and other responses to paragraphs 1-30 of the Complaint.

32. The first sentence is admitted. The second and third sentences refer to the cited Guidelines, which Guidelines speak for themselves.

33. Admitted.

34. Denied, except it is admitted that the Commissioner assigned the Cambria miners and their dependents to the Bellaire Group and that he determined that Cambria had employed the miners under a Coal Wage Agreement and would have received the assignments had it still been in business, that no related persons of Cambria other than the Bellaire Group were still in business, and that a member of the Bellaire Group had acquired Cambria's coal mining business in 1954.

35. Defendant lacks knowledge or information sufficient to form a belief in the truth or falsity of the allegations of the first sentence. The second sentence is denied.

36. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments in the first sentence, except to admit that in 1954 a member of the Bellaire Group purchased Cambria's coal mining business. The remainder of the paragraph contains plaintiffs' characterization of documents they supplied to the Commissioner in connection with their appeals, and said documents speak for themselves.

37. Paragraph 37 of the Complaint contains plaintiffs' characterization of regulations, the provisions of which speak for themselves.

38. Admitted.

39. Admitted.

40. The first and third sentences are admitted. The second sentence is denied.

41. Admitted.

42. Denied.

43. Denied.

44. Defendant hereby incorporates by reference his answers and other responses to paragraphs 1-43 of the Complaint.

45. Paragraph 45 of the Complaint contains plaintiffs' characterization of the Supreme Court's decision in *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998), which decision speaks for itself.

46. Admitted.

47. Denied, except that it is admitted that ICC signed a Coal Wage Agreement in 1966, that during the pendency of the agreement the Bellaire Group bought ICC's business, and that Bellaire thereafter signed, *inter alia*, the 1974, 1978, 1981, and 1984 NBCWAs.

48. Denied, except that it is admitted that Cambria signed a Coal Wage Agreement in 1954, that during the pendency of the agreement the Bellaire Group bought Cambria's business, and that Bellaire thereafter signed, *inter alia*, the 1974, 1978, 1981, and 1984 NBCWAs.

49. This paragraph contains plaintiffs' characterization of the Coal Act and of defendant's decisions construing the Coal Act, the provisions of which speak for themselves.

50. Paragraph 50 of the Complaint contains conclusions of law based on an incomplete contra-factual hypothetical rather than averments of fact to which an answer is required. To the extent an answer is

required, the Commissioner denies that he would have voided the assignments to ICC had ICC remained in business and, like its actual successor (Bellaire), signed the 1974, 1978, 1981, and 1984 NBCWAs.

51. Paragraph 51 of the Complaint contains conclusions of law based on an incomplete contra-factual hypothetical rather than averments of fact to which an answer is required. To the extent an answer is required, the Commissioner denies that he would have voided the assignments to Cambria had Cambria remained in business and, like its actual successor (Bellaire), signed the 1974, 1978, 1981, and 1984 NBCWAs.

52. Paragraph 52 of the Complaint is denied, except that it is admitted that the Commissioner did not void the assignments of the ICC and Cambria miners (and their dependents) to the Bellaire Group.

53. Denied.

54. Denied.

55. Defendant hereby incorporates by reference his answers and other responses to paragraphs 1-54 of the Complaint.

56. This paragraph contains plaintiffs' characterization of the Coal Act, the provisions of which speak for themselves.

57. This paragraph contains plaintiffs' characterization of the Coal Act, the provisions of which speak for themselves.

58. This paragraph contains plaintiffs' characterization of the Coal Act, the provisions of which speak for themselves.

59. Admitted.

60. Denied, except it is admitted that the Commissioner made some original assignments to the Bellaire Group after September 30, 1993, and that assignment letters making such assignments are attached as exhibits to the Complaint.

61. Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the averments of this paragraph, except it is admitted that SSA discloses whether an assignment is an original assignment or a reassignment only upon request.

62. Paragraphs 62 of the Complaint contains conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be deemed to be required, paragraph 62 of the Complaint is denied.

63. Denied.

64. Denied.

65. Defendant hereby incorporates by reference his answers and other responses to paragraph 1-64 of the Complaint.

66. The first two sentences are admitted. The third sentence contains plaintiffs' characterization of Count V of the Complaint, to which no response is required; if a response is required, the allegations are denied. The fourth sentence is denied, except that it is admitted that the specific assigned individual miners and dependents that Bellaire contends were wrongly assigned, the date of Bellaire's appeals, and the date of the Commissioner's final administrative decisions are set forth in a chart attached as Exhibit AA of the Complaint.

67. This paragraph contains plaintiffs' characterization of regulations, the provisions of which speak for themselves.

68. Admitted.

69. Admitted.

70. The first and third sentences are admitted. The second sentence is denied.

71. Admitted.

72. The first sentence contains conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be deemed to be required, the allegations are denied. The second sentence's averment that Bellaire's listing of, and contentions concerning, allegedly inconsistent agency decisions is set out in Exhibit NN to the Complaint is admitted; the remainder of the second sentence contains conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be required, the allegations are denied. The third sentence is admitted. The fourth sentence's averment that the allegedly inconsistent decisions are referenced in paragraph 71 and, in one case, attached as Exhibit ZZ are admitted; the remainder of the fourth sentence contains conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be required, the allegations are denied.

73. This paragraph contains conclusions of law and not averments of fact to which an answer is required; but insofar as an answer may be required, the allegations are denied.

74. Denied.

75. Defendant hereby incorporates by reference his answers and other responses to paragraphs 1-74 of the Complaint.

76. Denied, except it is admitted that the liability of the Bellaire Group is joint and several and that in some instances the Commissioner has reassigned liability among members of the Bellaire Group.

77. Denied, except that it is admitted that Exhibit AA to the Complaint contains a listing of miners that were reassigned within the Bellaire Group.

78. Admitted.

79. Admitted.

80. Admitted.

81. Admitted.

82. Denied.

83. Denied.

The remainder of plaintiffs' Complaint contains their prayer for relief, to which no response is required, but to the extent that a response is required, defendants deny that plaintiffs are entitled to the relief requested or to any relief whatsoever.

WHEREFORE, the Court should dismiss this action with prejudice or enter judgment for defendant, award defendant his costs, and enter any other relief that this Court deems just and proper.

Respectfully submitted,

DAVID W. OGDEN
Acting Assistant Attorney General
Civil Division

SHARON J. ZEALEY
United States Attorney

ROBERT L. SOLOMON
Assistant United States Attorney

/s/ BRIAN G. KENNEDY
RICHARD G. LEPLEY
BRIAN G. KENNEDY
Department of Justice
Civil Division, Room 1082
901 E Street, N.W.
Washington, D.C. 20530
Telephone: (202) 514-3357

Counsel for Defendant.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

CIVIL ACTION No. C2-99-532
JUDGE KINNEARY
MAGISTRATE JUDGE KING

BELLAIRE CORPORATION, NACCO INDUSTRIES, INC., AND THE NORTH AMERICAN COAL CORPORATION,
PLAINTIFFS

v.

KENNETH S. APFEL, COMMISSIONER OF SOCIAL SECURITY, DEFENDANT

AFFIDAVIT OF MICHAEL D. GLASS

Before me, the undersigned authority, appeared MICHAEL D. GLASS who, being duly sworn, deposed and stated as follows:

1. I am counsel for Bellaire Corporation ("Bellaire") and authorized by it to make this Affidavit on its behalf. I am also authorized to make this Affidavit on behalf of NAACO Industries, Inc. and The North American Coal Corporation (collectively, with Bellaire, the "Bellaire Group").

2. I have reviewed the Commissioner of Social Security's answer to the Bellaire Group's interrogatory number 19 in the above captioned matter and compared the information contained in that interrogatory answer with Exhibits C and QQ to the Complaint, as well as the billing statements received from the UMWA Combined

Benefit Fund by members of the Bellaire Group for the plan year beginning October 1, 1999 and concluding September 30, 2000. A copy of the Commissioner's pertinent interrogatory answer is attached as Exhibit 1-A to the Affidavit of Daniel J. Rolling (the "Rolling Affidavit"), and copies of the current plan year Combined Benefit Fund billing statements directed to any member of the Bellaire Group which include any individual referenced on Exhibit 1-A to the Rolling Affidavit are attached thereto as Exhibits 1-B and 1-C.

3. In addition to the 270 "DIXIE-LIKE MINERS" and their dependents listed by the Commissioner in Exhibit 1-A to the Rolling Affidavit, the Commissioner has also admitted in his Answer to the Complaint assigning a further two "DIXIE-LIKE MINERS" and their dependents to members of the Bellaire Group. These "DIXIE-LIKE MINERS" and their dependents are Wallace Gordon, SSN [redacted] and Leland A. Thomas, SSN [redacted] and his spouse, Clara Thomas. See Complaint, paragraph 60 and Exhibits C and QQ thereto and the Commissioner's Answer, paragraph 60.

4. Paragraph 60 of the Complaint stated as follows:

> The Bellaire Group avers on the basis of information and belief that the Commissioner made original assignments to the Bellaire Group after September 30, 1993 and in violation of the Coal Act's express terms on a number of occasions. The specific miners and dependents presently believed to have been the subject of original assignments after September 30, 1993 and the dates of their respective assignments to the Bellaire Group are set forth in a chart attached hereto and incorporated herein as

Exhibit C. The Commissioner's presently known unlawful original assignments to the Bellaire Group referrred to in this paragraph were made in several letters dated after September 30, 1993. Copies of these assignment letters referred to on Exhibit C are attached hereto as Exhibits PP through YY.

5. Paragraph 60 of the Commissioner's Answer stated as follows:

> Denied, *except it is admitted that the Commissioner made some original assignments to the Bellaire Group after September 30, 1993, and that assignment letters making such assignments are attached as exhibits to the Complaint.* [Emphasis added.]

6. Exhibit QQ to the Complaint is the assignment letter relating to the "DIXIE-LIKE MINERS" and their dependents mentioned in paragraph 3 above and the Commissioner has judicially admitted that the miners and dependents referenced therein were original assignments made after September 30, 1993.

7. The unlawful assignment by the Commissioner of these two additional "DIXIE-LIKE MINERS" and their dependents to members of the Bellaire Group has resulted in the Bellaire Group being assessed by the Combined Benefit Fund a total of 14 additional beneficiary-years' worth of excessive premiums under Section 9704 of the Coal Act. See attachment to the Rolling Affidavit, Exhibit 1-C, specific page identified by Bellaire Group production number BG00173.

8. By reason of the unlawful assignment of the two additional "DIXIE-LIKE MINERS" and their dependents admitted by the Commissioner in his Answer, paragraph 60, but not included among the 270 "DIXIE-LIKE MINERS" and their dependents admitted to by the Commissioner in Exhibit 1-A to the Rolling Affidavit, the Bellaire Group has already been assessed a further total of $27,450.09[1] of Combined Benefit Fund excessive premiums. See Rolling Affidavit, Exhibit 1-C thereto, specific page identified by Bellaire Group production number BG0173 and Exhibit 2-A hereto, setting forth annual per beneficiary Combined Benefit Fund premiums applicable for each plan year.

9. The Commissioner has refused to accept, obey or apply the holding of the Sixth Circuit that the Coal Act "requires that the SSA make all assignments of beneficiaries before October 1, 1993" and that the Coal Act "does not permit the SSA to make such assignments after that date." *Dixie Fuel*, 171 F.3d at 1064.

10. Instead, the Commissioner impermissably has imposed conditions upon the Sixth Circuit's Dixie Fuel holding which render it essentially meaningless. In a March 20, 2000 final administrative decision rendered on one of the Bellaire Group's administrative appeals relating to a "DIXIE-LIKE MINER" and is dependent, the Commissioner articulated the following general policy:

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[1] This figure includes $2.503.06 for the current plan year. As indicated in Exhibit 1, Rolling Affidavit, paragraphs 6 and 7 with respect to the larger sum referenced in paragraph 7 above, this $2,503.06 is payable in twelve equal installments due on the 25th of each month of the plan year, five such installments having already been paid.

As a result of the decision in *Dixie Fuel Company* v. *Apfel*, SSA will draw an assignment made to a signatory operator (or related person) if:

- the assignment decision was made on, or after, July 7, 1999; AND
- the miner was initially assigned to a signatory operator (or related person) on, or after October 1, 1993 AND
- the currently assigned operator (or related person) resides in the Sixth Circuit.

We have determined that the assignment decision for miner Elmer H. Hamilton was not made on, on after July 7, 1999, and that you do not reside in the Sixth Circuit. Therefore, you are still responsible for the assignments previously made to the company under the provisions of the Coal Act.

See Exhibit 2-B hereto.

11. The first condition imposed by the Commissioner upon the Sixth Circuit's Dixie Fuel decision upholds all of the Commissoiner's unlawful assignments made after September 30, 1993 and before July 7, 1999. This covers almost all of the Commissioner's unlawful assignments. For example, of the 270 "DIXIE-LIKE MINERS" the Commissioner admitted assigning to members of the Bellaier Group, only six were assigned after July 7, 1999 and would be rescinded under the Commissioner's newly announced policy, provided that the Commissioner's other conditions were met. See Exhibit 1-A to the Rolling Affidavit.

12. Further, the Commissioner simply is wrong in asserting that the Bellaire Group generally and Bellaire in particular do not "reside" in the Sixth Circuit. See Complaint, paragraph 1, 7, 8 and 9. In that regard,

a. The Commissioner had made the majority of the contested assignments of "DIXIE-LIKE MINERS" and their dependents to Bellaire under EIN 34-0431290 and a lesser number to North American under EIN 34-1554846. While no "DIXIE-LIKE MINERS" or their dependents have been assigned to NACCO, it is a related person to both Bellaire and North American. Of the three, only Bellaire is a signatory operator as defined in the Coal Act. NACCO and North American are merely related persons, within the meaning of the Coal Act, to Bellaire. Neither NACCO or North American ever employed any miner assignale under the Coal Act. Bellaire has prepared and filed all the administrative appeals referenced herein, regardless of which company received the assignment from the Commissioner.

b. Plaintiff Bellaire is a corporation organized under the laws of the state of Ohio with its principle place of business located at Signature Place II, 14785 Preston Road, Suite 1100, Dallas, Texas 75240-7891, but maintains an office at 155 Highway 7, Powhatan Point, Ohio 43942. Bellaire formerly operated bituminous coal mines and associated facilities located in Belmont County, Ohio, and in other locations. Bellaire still owns substantial coal reserves in Ohio. Bellaire administers those coal reserves, as well

as numerous worker's compensation and black lung claims from the Powhatan Point office.

c. Plaintiff NACCO is a corporation organized under the laws of the state of Delaware, with its principal place of business located at 5875 Landerbrook, Suite 300, Mayfield Heights, Ohio 44124. NACCO is the parent corporation of Bellaire.

d. Plaintiff North American is a corporation organized under the laws of the state of Delaware, with its principal place of business located at Signature Place II, 14785 Preston Road, Suite 1100, Dallas, Texas 75240-7891, but maintains an office at 155 Highway 7, Powhatan Point, Ohio 43942. North American is a subsidiary of NACCO.

13. Unless the 2 additional unlawful assignments of "DIXIE-LIKE MINERS" and their dependents referenced herein are revoked, the Bellaire Group will continue to be assessed excessive premiums by the Combined Benefit Fund as long as any of the 2 "DIXIE-LIKE MINERS" and their dependents live.

14. There is no just reason for delay in entering a final judgment on Count IV of the Complaint. In fact, entry of final judgment on Count IV will simplify the remainder of the case, since many of the assignments of benefciaries challenged in Count IV of the Complaint also are challenged in one or more other Counts for reasons wholly unrelated to Count IV. See, for example, the table I have prepared which is attached as Exhibit 2-C hereto. Exhibit 2-C lists assignments of beneficiaries subject to Count IV of the Complaint, but

also challenged under other Counts. The assignment of each beneficiary listed on Exhibit 2-C would be eliminated from further challenge under the other Counts of the Complaint upon entry of final judgment on Count IV.

/s/ MICHAEL D. GLASS
Michael D. Glass

Social Security Administration
Important Information

Southeastern Program Service Center
P.O. Box 10728
Birmingham, AL 35202

EIN: 34-0431290

George W. Bartlett, Jr.
Bellaire Corporation
14785 Preston Road, Suite 1100
Dallas, TX 75240-7891

This is in response to your letter dated July 6, 1999 concerning miners assigned to you under the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act).

In your July 6, 1999 letter, you requested that we withdraw the assignment of miner Elmer H. Hamilton (redacted) and his dependent, Georgette Hamilton (redacted), who were initially assigned to you on, or after, October 1, 1993. You also cited the Sixth Circuit *Dixie Fuel Company* v. *Apfel* decision as the basis for your request.

We previously advised you that the Social Security Administration (SSA) was reviewing this decision to determine its affect on other companies that received assignments under the Coal Act. We have now completed our review.

As a result of the decision in Dixie Fuel Company v. Apfel, SSA will withdraw an assignment made to a signatory operator (or related person) if:

- the assignment decision was made on, or after, July 7, 1999; and
- the miner was intially assigned to a signatory operator (or related person) on, or after October 1, 1993; and
- the currently assigned operator (or related person) resides in the Sixth Circuit.

We have determined that the assignment decision for miner Elmer H. Hamilton was not made on, or after, July 7, 1999, and that you do not reside in the Sixth Circuit. Therefore, you are still responsible for the assignments previously made to the company under the provisions of the Coal Act.

However, as stated in our letter to you dated February 4, 2000, SSA will review the assignment of this matter in accordance with your previous request, the evidence you presented with your July 6, 1999 letter, and any evidence you may present prior to the expiration of the 180 day extension you requested.

If you have any questions about this letter, please call us at (205) 801-3589. If you do call, please have this letter with you. It will help us answer your questions. You can also write to us at the address shown at the top of this letter, or you may fax a message to us at (205) 801-3595.

If you have any other questions, you should contact the United Mine Workers of America Combined Benefit Fund at the address below:

UMWA Combined Benefit Fund
4455 Connecticut Avenue, N.W.
Washington, D.C. 20008
((202) 895-3700

/s/ QUITTIE C. WILSON
QUITTIE C. WILSON
Assistant Regional Commissioner
Processing Center Operations

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

CIVIL ACTION No. C2-99-532
JUDGE KINNEARY
MAGISTRATE JUDGE KING

BELLAIRE CORPORATION, NACCO INDUSTRIES, INC., AND THE NORTH AMERICAN COAL CORPORATION,
PLAINTIFFS

v.

KENNETH S. APFEL, COMMISSIONER OF SOCIAL SECURITY, DEFENDANT

ANSWER OF THE TRUSTEES OF THE UMWA COMBINED BENEFIT FUND

The Trustees of the UMWA Combined Benefit Fund (the "Trustees"), answer the Complaint of Bellaire Corporation ("Bellaire"), NAACO Industries, Inc. ("NACCO"), and The North American Coal Corporation ("North American") as follows:

INTRODUCTION

1. The first sentence of Paragraph 1 of the Complaint constitutes Plaintiffs' characterization of their allegations, which the Trustees need not admit or deny. To the extent that any response is required, the Trustees deny that Plaintiffs are entitled to any relief. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 1 of the Complaint.

2. The first sentence of Paragraph 2 of the Complaint constitutes Plaintiffs' characterization of their allegations, which the Trustees need not admit or deny. To the extent that any response is required, the Trustees deny that Plaintiffs are entitled to any relief. The Trustees deny the remaining allegations in paragraph 2 of the Complaint.

3. The first sentence of Paragraph 3 of the Complaint constitutes Plaintiffs' characterization of their allegations, which the Trustees need not admit or deny. To the extent that any response is required, the Trustees deny that Plaintiffs' are entitled to any relief. The second sentence of Paragraph 3 of the Complaint asserts conclusions of law, which the Trustees need not admit or deny. To the extent that any response is required, the Supreme Court's decision in *Eastern* v. *Apfel*, 524 U.S. 498 (1998) (hereinafter "*Eastern*"), speaks for itself. Upon information and belief, the Trustees admit that the Commissioner voided assignments of Combined Fund beneficiaries made to numerous coal operators; the Trustees are without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in the third sentence of Paragraph 3 of the Complaint. Upon information and belief, the Trustees admit that Independent Coal & Coke Company ("ICC") and Cambria Mining Company ("Cambria" were signatory to National Bituminous Coal Wage Agreements ("NBCWAs"); the Trustees are without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in the fourth sentence of Paragraph 3 of the Complaint. The Trustees deny the remaining allegations in Paragraph 3, and aver that Plaintiffs are not similarly situated to Eastern Enterprises, the petitioner in *Eastern*. Unlike

Eastern Enterprises, Plaintiff Bellaire, a "related person" under the Coal Act to Plaintiff's NACCO and North American, signed 1974 and later NBCWAs, including the NBCWAs of 1974, 1981, and 1984, each of which expressly referred to lifetime health benefits for retired coal miners and their dependents. Moreover, during the terms of the 1974 and 1978 NBCWAs, Bellaire was a member of the Bituminous Coal Operators' Association, Inc. ("BCOA"), which negotiated the terms and conditions of those NBCWAs on Bellaire's behalf. Although Bellaire withdrew from the BCOA in December 1980, it was a "me, too" signatory to the 1981 and 1984 NBCWAs and signed two extension agreements that obligated it to provide health benefits to its own retirees until January 20, 1990. *Bellaire Corp v. Shalala*, 995 F. Supp. 125, 130 (D.D.C. 1997).

4. The first sentence of Paragraph 4 of the Complaint constitutes Plaintiffs' characterization of their allegations, which the Trustees need not admit or deny. To the extent that any response is required, the Trustees deny that Plaintiffs are entitled to any relief. The Trustees deny the remaining allegations of Paragraph 4 of the Complaint.

5. The first sentence of Paragraph 5 of the Complaint constitutes Plaintiffs' characterization of their allegations, which the Trustees need not admit or deny. To the extent that any response is required, the Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraphs 5 of the Complaint.

6. The first sentence of Paragraph 6 of the Complaint constitutes Plaintiffs' characterization of their allegations, which the Trustees need not admit or deny.

The remaining sentences of Paragraph 6 of the Complaint assert conclusions of law, which the Trustees need not admit or deny. To the extent that any response is required, the Trustees rely on the language of the Coal Act pertaining to joint and several liability and SSA's assignment process, which speaks for itself. The Trustees otherwise are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 6 of the Complaint.

PARTIES

7. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 7 of the Complaint.

8. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 8 of the Complaint.

9. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 9 of the Complaint.

10. The Trustees admit that Kenneth S. Apfel is the Commissioner of Social Security. On information and belief, the Trustees admit the remaining allegations in Paragraph 10 of the Complaint.

JURISDICTION AND VENUE

11. The allegations in Paragraph 11 of the Complaint constitute conclusions of law, which the Trustees need not admit or deny.

12. The allegations in Paragraph 12 of the Complaint constitute conclusions of law, which the Trustees need not admit or deny.

THE ASSIGNMENT PROCESS UNDER THE COAL ACT

13. The allegations in Paragraph 13 of the Complaint constitute conclusions of law, which the Trustees need not admit or deny. To the extent that any response is required, the Trustees rely on the language of the referenced sections of the Coal Act, which speaks for itself.

14. The allegations in Paragraph 14 of the Complaint constitute conclusions of law, which the Trustees need not admit or deny. To the extent that any response is required, the Trustees rely on the language of the referenced section of the Coal Act, which speaks for itself.

15. The allegations in Paragraph 15 of the Complaint constitute conclusions of law, which the Trustees need not admit or deny. To the extent that any response is required, the Trustees rely on the language of the referenced sections of the Coal Act, which speaks for itself.

16. The allegations in Paragraph 16 of the Complaint constitute conclusions of law, which the Trustee need not admit or deny. To the extent that any response is required, the Trustees rely on the language of the referenced sections of the Coal Act, which speaks for itself.

17. The allegations in Paragraph 17 of the Complaint constitute conclusions of law, which the Trustees need not admit or deny. To the extent that any response is required, the Trustees rely on the language of the referenced sections of the Coal Act, which speaks for itself.

COUNT I

18. The Trustees restate and incorporate by reference herein their responses to the allegations set forth in Paragraphs 1-17 of the Complaint in response to Paragraph 18 of the Complaint.

19. Upon information and belief, the Trustees admit that the Commissioner has issued internal guidelines for making assignments under the Coal Act. The remaining allegations in Paragraph 19 of the Complaint, which purport to describe and characterize the Commissioner's guidelines, need not be admitted or denied. The Trustees rely on the language of the Commissioner's guidelines to speak for itself.

20. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint.

21. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 21 of the Complaint.

22. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the first sentence in Paragraph 22 of the Complaint. The allegations in the second sentence of Paragraph 22 of the Complaint constitute conclusions of law, which the Trustees need not admit or deny. To the extent that any responses is required, the Trustees rely on the language of the referenced section of the Coal Act, which speaks for itself. Answering further, the Trustees deny that an assigned operator must have common ownership or a partnership with a signatory operator to qualify as a "related person" under the Coal Act.

23. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 23 of the Complaint.

24. The allegations in Paragraph 24 of the Complaint constitute conclusions of law, which the Trustees need not admit or deny. To the extent that any response is required, the Trustees rely on the language of the referenced section of the Code of Federal Regulations, which speaks for itself.

25. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 25 of the Complaint.

26. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 26 of the Complaint.

27. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 27 of the Complaint. Answering further, the Trustees deny Plaintiffs' allegation in the second sentence of Paragraph 27 of the Complaint that the Coal Act does not permit the Commissioner to assign miners to successors of signatory operators.

28. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 28 of the Complaint.

29. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in subheading (b) of Paragraph 29 of the Complaint. The Trustees deny the remaining allegations in Paragraph 29 of the Complaint.

30. The Trustees deny the allegations in Paragraph 30 of the Complaint.

COUNT II

31. The Trustees restate and incorporate by reference herein their responses to the allegations set forth in paragraphs 1-30 of the Complaint in response to Paragraph 31 of the Complaint.

32. Upon information and belief, the Trustees admit that the Commissioner has issued internal guidelines for making assignments under the Coal Act. The remaining allegations in Paragraph 32 of the Complaint, which purport to describe and characterize the Commissioner's guidelines, need not be admitted or denied. The Trustees rely on the language of the Commissioner's guidelines to speak for itself.

33. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 33 of the Complaint.

34. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 34 of the Complaint.

35. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the first sentence of Paragraph 35 of the Complaint. The remaining allegations in Paragraph 35 of the Complaint constitute conclusions of law, which the Trustees need not admit or deny. To the extent that any response is required, the Trustees rely on the language of the referenced section of the Coal Act, which speaks for itself. Answering further, the Trustees deny that an assigned operator must have common ownership or a partnership with a signatory operator to qualify as a "related person" under the Coal Act.

36. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 36 of the Complaint.

37. The allegations in Paragraph 37 of the Complaint constitute conclusions of law, which the Trustees need not admit or deny. To the extent that any response is required, the Trustees rely on the language of the referenced section of the Code of Federal Regulations, which speaks for itself.

38. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 38 of the Complaint.

39. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 39 of the Complaint.

40. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 40 of the Complaint. Answering further, the Trustees deny Plaintiffs' allegation in the second sentence of Paragraph 40 of the Complaint that the Coal Act does not permit the Commissioner to assign miners to successors of signatory operators.

41. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 41 of the Complaint.

42. The Trustees deny the allegations in Paragraph 42 of the Complaint.

43. The Trustees deny the allegations in Paragraph 43 of the Complaint.

COUNT III

44. The Trustees restate and incorporate by reference herein their responses to the allegations set forth in paragraphs 1-43 of the Complaint in response to Paragraph 44 of the Complaint.

45. Paragraph 45 asserts conclusions of law, which need not be admitted or denied. To the extent that any answer is required, the Supreme Court's decision in *Eastern* speaks for itself.

46. Upon information and belief, the Trustees admit that the Commissioner voided assignments of Combined Fund beneficiaries made to numerous coal operators. The Trustees are without sufficient knowledge or information to form a belief as to the remaining allegations in Paragraph 46 of the Complaint.

47. Upon information and belief, ICC was signatory to an NBCWA; the Trustees are without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in Paragraph 47 of the Complaint.

48. Upon information and belief, Cambria was signatory to an NBCWA; the Trustees are without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in Paragraph 48 of the Complaint.

49. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 49 of the Complaint.

50. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 50 of the Complaint.

51. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 51 of the Complaint.

52. Upon information and belief, the Trustees admit that the Commissioner did not void the assignments of the ICC and Cambria miners (and their dependents) to Plaintiffs. The Trustees deny any remaining allegations in Paragraph 52 of the Complaint.

53. The Trustees deny the allegations in Paragraph 53 of the Complaint. Answering further, the Trustees aver that Plaintiffs are not similarly situated to Eastern Enterprises, the petitioner in *Eastern*.

54. The Trustees deny the allegations in Paragraph 54 of the Complaint.

COUNT IV

55. The Trustees restate and incorporate by reference herein their responses to the allegations set forth in paragraphs 1-54 of the Complaint in response to Paragraph 55 of the Complaint.

56. The allegations in Paragraph 56 of the Complaint constitute conclusions of law, which the Trustees need not admit or deny. To the extent that any response is required, the Trustees rely on the language of the Coal Act, which speaks for itself. The Trustees deny, however, that under the Coal Act, any original assignments made by the Commissioner after September 30, 1993, are, merely by virtue of their date, unlawful.

57. The allegations in Paragraph 57 of the Complaint constitute conclusion of law, which the Trustees need not admit or deny. To the extent that any response is required, the Trustees rely on the language of the Coal Act, which speaks for itself. The Trustees deny, how-

ever, that under the Coal Act, any original assignments made by the Commissioner after September 30, 1993, are, merely by virtue of their date, unlawful.

58. The allegations in Paragraph 58 of the Complaint constitute conclusions of law, which the Trustees need not admit or deny. To the extent that any response is required, the Trustees rely on the language of the Coal Act, which speaks for itself.

59. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 59 of the Complaint.

60. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the factual allegations in Paragraph 60 of the Complaint. The Trustees deny, however, that any assignments made by the Commissioner to the Bellaire Group after September 30, 1993 are, merely by virtue of their date, "unlawful" or in violation of the Coal Act.

61. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 61 of the Complaint. Answering further, the Trustees deny that any assignments made by the Commissioner after September 30, 1993, are, merely by virtue of their date, unlawful.

62. The allegation in Paragraph 62 of the Complaint that "[t]he Commissioner's making of original assignments after September 30, 1993 presents a pure question of law as to which a request for administrative review would have been futile," constitutes a conclusion of law, which the Trustees need not admit or deny. To the extent that any response is required, the Trustees rely on the language of the Coal Act, which speaks for itself. The Trustees are without sufficient knowledge

or information to form a belief as to the truth of the remaining allegations in Paragraph 62 of the Complaint.

63. The Trustees deny the allegations in Paragraph 63 of the Complaint.

64. The Trustees deny the allegations in Paragraph 64 of the Complaint.

COUNT V

65. The Trustees restate and incorporate by reference herein their responses to the allegations set forth in paragraphs 1-64 of the Complaint in response to Paragraph 65 of the Complaint.

66. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 66 of the Complaint.

67. The allegations in Paragraph 67 of the Complaint constitute conclusions of law, which the Trustees need not admit or deny. To the extent that any response is required, the Trustees rely on the language of the referenced section of the Code of Federal Regulations, which speaks for itself.

68. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 68 of the Complaint.

69. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 69 of the Complaint.

70. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 70 of the Complaint.

71. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 71 of the Complaint.

72. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 72 of the Complaint.

73. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 73 of the Complaint.

74. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 74 of the Complaint.

COUNT VI

75. The Trustees restate and incorporate by reference herein their responses to the allegations set forth in paragraphs 1-74 of the Complaint in response to Paragraph 75 of the Complaint.

76. Paragraph 76 of the Complaint asserts conclusions of law, which the Trustees need not admit or deny. To the extent that any response is required, the Trustees rely on the language of the Coal Act pertaining to joint and several liability and SSA's assignment process, which speaks for itself.

77. The first and second sentences of Paragraph 77 of the Complaint assert conclusions of law, which the Trustees need not admit or deny. To the extent that any response is required, the Trustees rely on the language of the Coal Act pertaining to joint and several liability and SSA's assignment process, which speaks for itself. The Trustees otherwise are without sufficient knowledge or information to form a belief as to the

truth of the allegations in Paragraph 77 of the Complaint.

78. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 78 of the Complaint.

79. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 79 of the Complaint.

80. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 80 of the Complaint.

81. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 81 of the Complaint.

82. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 82 of the Complaint.

83. The Trustees are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 83 of the Complaint.

84. Any allegations in the Complaint not expressly admitted or otherwise specifically addressed in the foregoing paragraphs are denied.

PRAYER FOR RELIEF

With respect to Counts I through IV, the Trustees deny that Plaintiffs are entitled to any of the relief requested in their Prayer for Relief or to any relief whatsoever. With respect to Counts V and VI, the Trustees currently lack sufficient knowledge or information to form a belief as to whether Plaintiffs are entitled to any relief.

AFFIRMATIVE DEFENSES

1. The Complaint, or parts of it, fails to state a claim upon which relief can be granted.

2. Plaintiffs' claims, or some of them, are barred by the doctrine of *res judicata.*

3. Plaintiffs' claims, or some of them, are barred by the statute of limitations and/or laches.

Respectfully submitted,

/s/ ALVIN J. McKENNA
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(202) 895-3737

Counsel for the Trustees of the UMWA Combined Benefit Fund

November 8, 1999

Social Security Administration
Important Information

Great Lakes Program Service Center
P.O. Box 87109
Chicago, Illinois 60680
Date: 09/28/93

CREDIT UNIONS CHARTERED IN THE
SUNNYSIDE
PO BOX F
UT 84539-0000 EIN: 87-0236316

We are writing to you about the Coal Industry Retiree Health Benefit Act of 1992. Under this law, we must assign responsibility as explained below for the payment of health and death benefit premiums for retired miners and their relatives who qualify. To qualify, the miners or their relatives must have been qualified for and receiving benefits under a prior United Mine Workers of America (UMWA) benefit plan as of July 20, 1992.

We have reviewed our earnings records of retired coal miners identified by the UMWA benefit plans and decided that you are the operator responsible for the premiums for the beneficiaries named on the enclosed list. This list also explains why we have assigned you responsibility for the benefit premiums of these beneficiaries.

You will hear from the UMWA Combined Benefit Fund with more information about the benefit premiums. We will let you know of any other assignments we may make to you.

To Whom We May Assign Responsibility for Premiums

We may assign responsibility for premiums to either:

- a signatory operator that formerly employed the miner, or
- a company related to such signatory operator that is no loner in business.

Who is a Signatory Operator and Its Related Company

A signatory operator is an employer who signed an agreement with the UMWA meeting certain requirements of the new law. A related company is either:

- a member of the controlled group of corporations (within the meaning of 26 United States Code (U.S.C.) 52(a)) that includes the signatory operator; or
- a trade or business under common control (as determined by 26 U.S.C. 52(b)) with the signatory operator; or
- any other person, other than a limited partner, having a partnership interest or joint venture with a signatory operator in a business within the coal industry that employed the miner; or
- a successor in interest to any of the companies described above.

A related company must have met one of the four conditions defined above as of July 20, 1992, or if earlier, right before the signatory ceased to be in business.

How We Assign Responsibility

We assign responsibility to an operator who our records show employed the miner in the coal industry under the UMWA agreement. The operator

must still be in business. If the operator is no longer in business, we assign responsibility to the operator's related company that is still in business. We assign responsibility using the following order of priority:

- the last operator to employ the miner under an agreement for at least two years if that operator was also a signatory to a 1978 or later agreement; or
- the last operator to employ the miner under an agreement if that operator was also a signatory to a 1978 or later agreement; or
- the operator who employed the miner under an agreement for the longest period of time before 1978.

If the signatory operator that employed the miner is no longer in business, its premium responsibility must be assumed by any related company still in business.

If You Disagree

If you disagree with the assignment to you of anyone on the enclosed list, you have the right to ask us to review the assignment. But first, you may want to write us to the address at the top of this letter and ask to see the miner's earnings record and the basis for the assignment. After looking at this information, if you still disagree, you can write to us at the same address and ask us to review the assignment.

To ask for a review, you must explain in writing why you disagree and either give us evidence that, standing alone, shows our assignment was in error or

ask for extra time to gather evidence. If you do not give us evidence, we will not review the assignment.

Some examples of evidence we would consider include federal, State or local tax records and legal documents such as incorporation, merger and bankruptcy papers, health and safety reports filed with federal or State agencies that regulate mining activity, payroll and other employment business records, and information in trade journals and newspapers.

- You have 30 days from the day you receive this letter to either request the earnings record and the basis for the assignment or ask for a review.
- If you request the earnings record and the basis for the assignment, the 30 days to ask for a review start the day after you receive them. If you do not request this information, the 30 days to ask for a review start the day after you receive this letter.
- If you want extra time to gather evidence, you must ask for it in your written request for review. You will then have 90 days from the day you request a review to give us the evidence you want us to consider.

Unless you show otherwise, we assume that you receive any letter from us within 5 days of the date on the letter.

If You Have Any Questions

If you have any questions about this letter, please call us at 312-353-4804. If you do call please have this letter with you. It will help us answer your questions.

You can also write to us at the address shown at the top of this letter. Please write to us if you want us to review the assignment.

If you have any questions about your responsibilities as an assigned operator under this new law, you should contact the UMWA Combined Benefit Fund at the address below:

UMWA Combined Benefit Fund
4455 Connecticut Ave., N.W.
Washington, D.C. 20008

/s/ [illegible]
Assistant Regional Commissioner
Processing Center Operations

List of Assigned Miners and Other Beneficiaries

Below we identify the miner(s) and their eligible relatives that we have assigned to you. We also show the reason we believe you are responsible for the coal industry health and death benefit premiums for those individuals.

Our records show that you employed the miner in the coal industry under an UMWA agreement and you are still in business. Also, you were the last operator to employ the miner under an agreement for at least two years, and you were a signatory to a 1978 or later agreement.

NOTE: Entries under "Dates Miner Employed" that display only the month and year indicate that the miner worked for one or more months in the calendar quarter ending with the month displayed.

Asterisk (*) denotes miner.

Miners and Other Beneficiaries	SSN	Dates Miner Employed
		03/46-06/48

List of Assigned Miners and Other Beneficiaries

Below we identify the miner(s) and their eligible relatives that we have assigned to you. We also show the reason we believe you are responsible for the coal industry health and death benefit premiums for those individuals.

Our records show that you employed the miner in the coal industry under an UMWA agreement and you are still in business. Also, you were the operator who employed the miner named below under an UMWA agreement for the longest period of time before 1978.

NOTE: Entries under "Dates Miner Employed" that display only the month and year indicate that the miner worked for one or more months in the calendar quarter ending with the month displayed.

Asterisk (*) denotes miner.

Dates Miner Employed
01/46-03/51
03/46-12/46
06/47-06/47

List of Assigned Miners and Other Beneficiaries

Below we identify the miner(s) and their eligible relatives that we have assigned to you. We also show the reason we believe you are responsible for the coal industry health and death benefit premiums for those individuals.

Our records and UMWA records indicate that you are related to the signatory operator named below who is no longer in business. This operator would have been responsible under the law for the miner named below under the rules for how we assigned responsibility explained on page 2. Therefore, as a related company you must assume responsibility.

NOTE: Entries under "Dates Miner Employed" that display only the month and year indicate that the miner worked for one or more months in the calendar quarter ending with the month displayed.

Asterisk (*) denotes miner.

Miners and Other Beneficiaries	SSN	Dates Miner Employed by Signatory Company	Signatory Operator Name
			UTAH FUEL CO
			UTAH FUEL CO
			UTAH FUEL CO
			UTAH FUEL CO
			UTAH FUEL CO

		UTAH FUEL CO
		UTAH FUEL CO
GORDON WALLACE	01/46-03/51	UTAH FUEL CO
		UTAH FUEL CO
		UTAH FUEL CO
THOMAS LEL. .ND J	10/46-09/48 01/49-03/51	UTAH FUEL CO
THOMAS CLARA H		

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

CIVIL ACTION No. C2-99-532
JUDGE KINNEARY
MAGISTRATE JUDGE KING

BELLAIRE CORPORATION, NACCO INDUSTRIES, INC., AND THE NORTH AMERICAN COAL CORPORATION,
PLAINTIFFS

v.

KENNETH S. APFEL, COMMISSIONER OF SOCIAL SECURITY ADMINISTRATION, DEFENDANT

DECLARATION OF RICHARD HARRON

I, Richard Harron, declare as follows:

1. I am the Director of the Division of Coverage and Support, Office of Program Benefits, Office of the Deputy Commissioner for Disability and Income Security Programs, Social Security Administration (SSA). The Office of the Deputy Commissioner for Disability and Income Security Programs is the SSA component responsible for, among other things, coordinating implementation of the Coal Act for the Commissioner of Social Security. The information contained in this declaration has been supplied to me by several individuals in various SSA components and is true and correct to the best of my knowledge and belief.

2. In October 1992, Congress enacted the Coal Industry Retiree Health Benefit Act of 1992 (the Coal

Act), Pub. L. No. 102-486, 106 Stat. 3036 (now codified at 26 U.S.C. 9706-22) which directs the Commissioner of Social Security (the Commissioner) to match beneficiaries of the 1950 and 1984 United Mine Workers of America (UMWA) Benefit Plans with the signatory coal industry operator responsible for paying their health and death benefit premiums.

3. Although the Coal Act directed SSA to assign coal miners to appropriate coal operators according to particular criteria contained in the law, SSA could not expend any administrative resources to implement the relevant provisions of the law without a specific budgetary authorization from Congress. Congress did not provide this budgetary appropriation until July 2, 1993. Thus, SSA did not have the budgetary authority to even begin processing the massive agency workload created by the Coal Act until July 1993.

4. The agency workload created by the Coal Act was substantial. Before the process of assigning beneficiaries to coal operators could even begin, however, SSA had to develop and publish regulations, develop internal operating procedures, negotiate with each local union in the regions where the workload was to be performed, and train the agency employees to process the workload in an appropriate manner. In order to properly assign beneficiaries to coal operators, SSA was required to review the earnings records of each miner identified by the UMWA Combined Benefit Fund (the Combined Fund) as an eligible beneficiary for assignment under the provisions of the Coal Act. In November 1992, the Combined Fund sent a list to SSA which contained the names and Social Security account numbers of approximately 86,000 miners who the

Combined Fund identified as eligible for assignment under the provisions of the Coal Act. SSA was required to review the earnings record of each miner, consider every mining company which employed the miner during his lifetime, and match the miner with the appropriate mining company pursuant to the criteria established in the Coal Act. In order to determine which operators actually employed each of the miners, SSA had to retrieve and review earnings records dating back to 1946. The retrieval of the miners' earnings records before 1978 was an especially labor-intensive operation since this information is only maintained on microfilmed files.

5. Once SSA identified a responsible operator for each miner, SSA had to determine whether the responsible operator was still in business. If SSA determined that the operator was no longer in business, SSA had to determine whether the miner could be assigned to a "related person" of the operator as defined in the Coal Act.

6. Despite the fact that SSA did not receive Congressional budgetary authorization to begin processing the Coal Act workload until July 1993, SSA was able to assign a large majority of the eligible beneficiaries by September 30, 1993. By September 30, 1993, SSA had assigned 38,615 miners to specific coal operators and made initial determinations that 20,005 miners could not be properly assigned to specific coal operators based on information available at that time. In addition, SSA secured stipulations from 15 coal operators establishing responsibility for 16,281 additional beneficiaries. In fact, by September 30, 1993, SSA had matched 74,901 miners with specific coal operators (or

their companies), or placed them in the unassigned pool, according to the criteria set forth in the Coal Act.

7. SSA implemented provisions of the Coal Act with the understanding that Congress intended SSA to assign the greatest number of miners to appropriate coal operators and to limit, as much as possible, the number of unassigned beneficiaries. Although SSA managed to make initial evaluations regarding a large majority of the eligible miners during the brief period between July 1993 and September 30, 1993, some miners still had to be initially evaluated as of October 1, 1993. In addition, it was recognized that some of the assignments made during that period might have to be changed in the future if additional information warranting such a change became available to the agency. Moreover, it was recognized that many of the miners who were designated as unassigned prior to October 1, 1993, could still be properly assigned to coal operators if the agency had additional time to review records and information regarding existing coal operators who might be related to coal operators no longer in business. Thus, SSA continued to work on implementing the provisions of the Coal Act after September 30, 1993. By April 1, 1994, SSA was able to complete its evaluation of the miners that had not been initially assigned as of October 1, 1993, and determined that 2,264 of these miners could be properly assigned to coal operators.

8. In November 1993, the Combined Fund informed SSA that they had conducted a random sampling review of the pool of 20,005 initially unassigned miners and had determined that many of these miners could be properly assigned to specific coal operators. SSA considered the information provided by

the Combined Fund which related to the operating status of various coal operators and their related companies, and determined that the pool of initially unassigned miners should be reviewed. However, SSA's workload resources at that time had to be directed toward responding to the numerous requests for review from the coal operators which arose out the round of initial assignments made by September 30, 1993. Coal operators challenging the initial assignments normally requested miners' earnings records and other documentation which SSA relied upon to make the initial assignments. But SSA's Program Service Centers (PSCs), the regional operational facilities where the initial assignments and reviews were performed, had to rely upon an automated delivery system to print and mail the earnings records to the requesting operators, and this system was not operational until April 1994. Also during this period, SSA's Office of Systems was developing the national database for the PSCs to facilitate miner-specific reviews. The PSCs could not control the review of the thousands of miner-specific assignments without an electronic system that could facilitate the exchange of data between the PSCs so that everyone had instant access to the information that was being updated daily. Therefore, SSA could not begin directing resources toward reviewing the pool of initially unassigned miners until 1995.

9. SSA began reviewing the pool of initially unassigned miners in January 1995. However, since SSA mails all assignment notices at the same time, none of the initially unassigned miner notices were sent until a first batch of reviews was completed in June 1995. A second round of initially unassigned miner notices was

sent in September 1995. SSA assigned 5,301 miners from the pool of initially unassigned miners.

10. On April 8, 1998, the Combined Fund sent SSA a list of additional eligible beneficiaries who had not been included in the first list sent in 1992 because the beneficiaries had been in suspended pay status when the Combined Fund compiled their 1992 list of eligible beneficiaries. In response to this new information, SSA initially assigned 278 additional miners on September 22, 1997.

Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on: 4/26/00 /s/ RICHARD HARRON
RICHARD HARRON